

International Law and the Expulsion of Ugandan Asians

The Ugandan Asian Community

The Ugandan Asian Community which came mainly from the Punjab, Gujarat and Goa, formed an unpopular minority whose numbers increased substantially during the present century.¹ Their unpopularity stemmed in part from the degree of economic success that they had enjoyed. Before the expulsion of the non-citizen Asians, the Ugandan Asian community played a very important role in commerce and industry.² They had come to the country as railway workers, but many of them had entered commerce.

During the period of the British protectorate, they had been favored by the British administrators in the granting of trade licenses, whilst banks were often prepared to grant them credit on favourable terms. By the time of independence, they had built up important interconnections in the internal wholesale and retail trade, and also in the export-import trade.³ Considerable differences often occurred between the incomes of Asians and Africans,⁴ and members of the Ismailia community were often very wealthy.

The Asians were also unpopular because they maintained religious and cultural distinctions and did not generally mix socially, or intermarry with Africans.⁵ They were often accused of economic exploitation of Africans, and of corrupt business practices.⁶ Such accusation often stemmed from the employ-

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¹See Y. GHAI and D. GHAI, *THE ASIAN MINORITIES OF EAST AND CENTRAL AFRICA*, pub. Minority Rights Group (which is currently being revised) and JUSTIN O'BRIEN, *BROWN BRITONS*, pub. Rannymede Trust 1972, for accounts of the East African and the Ugandan Asians. See also *PORTRAIT OF A MINORITY*, pub. O.U.P. 1963, especially the contributions by Dharam P. Ghai.

²See the figures quoted by Justin O'Brien, *General Amin and the Ugandan Asians*, *ROUND TABLE*, page 91 at page 98.

³Justin O'Brien, *op. cit.*, *supra*, note 1, at page 92.

⁴Justin O'Brien, *op. cit.*, *supra*, note 1, at page 98.

⁵Note, in this context, the memorandum of the Asian leaders to President Amin of Dec. 8th 1971, which may be found in the work cited by Justin O'Brien. The unwillingness of Africans of different tribes to intermarry is pointed out in this memorandum.

⁶For the view of an East African Ismailia Muslim, as to the truth of some of the charges levelled at the Ugandan Asians, see the letter of A. K. Rupani, LL.M., to *The Times* of September 5th, 1972 at page 13.

ment of traditional Asian procedures of bargaining.⁷ They were also frequently accused of sending money out of the country.

Owing to the system of trade licensing which dated from the days of the protectorate,⁸ the Asians tended to be confined to the large towns, such as Entebbe, Kampala and Jinja. They did not engage in agriculture, and were, in fact, precluded from owning land.⁹ They thus limited themselves to trade, industry, the professions and skilled employment. Although there were some notable exceptions, they generally failed before the attainment of independence to identify sufficiently with African aspirations towards freedom.¹⁰ One cannot regard the mass expulsions of the Ugandan Asians as historically inevitable, but the ending of their privileged status must be so regarded.

As they lacked political power, themselves, and could no longer depend on the political power of the British, their main hope of survival was to prove themselves useful to the dominant political and economic power groups in Uganda. It was evident that, in time, the local bourgeoisie would find their competition troublesome, and that a decreasing degree of dependence would be felt on them. Thus trade licensing and other legislation aimed at discriminating in favour of local citizens was probably inevitable. It would also have been possible for Uganda to nationalise the smaller and medium sized Asian businesses: the larger ones were nationalised by Dr. Obote in 1970.

The Ugandan Asians valued education, and made a considerable contribution to the professions. It is not surprising that General Amin offered members of certain professions (and certain other persons) exemption from expulsion, in accordance with his two relevant decrees ordering the expulsion of non-citizen Asians.¹¹

In the present article, consideration will be given to the circumstances leading to the expulsion; the carrying out of the expulsions and the expropriation of the Asian property, and the reaction of this country and the international community to these actions. The international legality of the expulsions and the expropriation of the Asian property will then be considered, and an attempt will be made to draw some general conclusions from the international reaction to the actions of General Amin.

The Impact of the Ugandan Nationality Laws on the Asians

It is necessary to consider Ugandan nationality laws before adverting to the circumstances which led to the expulsion of the Asians. Before Uganda became

⁷D.P. Ghai, *op. cit.*, *supra*, note 1, at page 104.

⁸*See for example*, the Trade Act of 1938.

⁹D.P. Ghai, *op. cit.* at page 100-101.

¹⁰*See* Yash Tandon's contribution to the work cited above at page 69.

¹¹Decree Nos. 17 and 30 of 1972.

independent, the Asians residing in that country, which was a British protectorate, sometimes had citizenship of the United Kingdom and colonies as a result of descent from persons born in undivided Imperial India,¹² or as a result of registration¹³ or naturalisation.¹⁴ Certain of them were Indian¹⁵ or Pakistani nationals, whilst a category remained of British protected persons.

The parents of such persons were often born in Portuguese Africa or in the Indian princely states, so that they did not enjoy British citizenship through descent, but could acquire it through naturalisation or registration. The independence of Uganda in October 1962¹⁶ did not mean that Uganda Asians automatically acquired Ugandan nationality. Section 7(1) of the Ugandan Constitution of 1962,¹⁷ provided that all persons born in Uganda who were citizens of the United Kingdom and colonies, or British protected persons, should become citizens of Uganda on October 9th, 1962.

It continued, however, to provide that a person should not become a citizen of Uganda in virtue of this subsection if neither of his parents were born in Uganda.¹⁸ It was provided by sections 8(1)-8(5) of the Constitution, that those subject to the proviso mentioned, and the wives or ex-wives of such persons, should be registered as citizens of Uganda upon making application before October 9th, 1964, in the prescribed form.¹⁹

The Uganda Citizenship Ordinance of October 9th, 1962, section 6(2)²⁰ provides that persons who apply for citizenship by registration shall become citizens by registration on the date on which they are registered. Section 6(2) provides as follows:

If a person of full age, who is registered as a citizen of Uganda under this Ordinance does not produce to such office as the Minister may appoint in that behalf, within

¹²British Nationality Act, 1948, sections 5, 12 (2) and 12 (3).

¹³*Ibid.*, section 6 (1) (b), section 6 (2) and section 7.

¹⁴*Ibid.*, section 10 and Schedule 2, para 3, and also Commonwealth Immigrants Act, 1962, section 12 (2).

¹⁵See the provisions of the Indian Constitution, articles 5-11, and the Indian Citizenship Act, 1955.

¹⁶See the Uganda Independence Order, 1962, S.I. 962/2125.

¹⁷The Constitution was revised in 1967, but suspended at least in part, on the accession of General Amin to power. See Keesing's *Contemporary Archives*, February 13-20th, 1971, at page 24451. On February 2nd, 1971, General Amin announced (Decree No. 5 of 1971, published March 12th) that he had taken the necessary steps to confirm himself in power, and that certain constitutional provisions had been suspended. As a result, all power previously held by the president would be vested in himself as military Head of State. Parliament was dissolved. He stated that all legislative powers vested in him, and he would legislate by decrees signed by himself, being assisted by a cabinet with advisory functions. For obvious reasons, the legality of the Ugandan revolution of 1971 does not appear to have been tested in the courts.

¹⁸This rejection of the *jus soli* occurs in other African countries. Note the provisions of the Kenyan Constitution of 1969, chapter 6, which relate to citizenship.

¹⁹Note also article 4 and article 6 (3) (a) of the new Constitution of 1967. Article 4 provides that those who have been registered or who become registered in accordance with the law are Ugandan citizens.

²⁰Uganda Statutory Instruments, No. 63 of 1962.

three months of being so registered, or within such further period as the Minister or such officer may allow, evidence sufficient to satisfy such officer that he has renounced any other nationality or citizenship which he may have possessed and that he has taken an oath of allegiance in the form specified in the First Schedule to this Ordinance, the registration of that person as a citizen of Uganda shall be cancelled, and he shall be deemed never to have been registered.²¹

It was realized by the U.K. that many Asians would be reluctant to acquire Ugandan nationality, and that if the transfer of sovereignty led to the termination of their British citizenship or nationality, they would be rendered stateless. The U.K. signed the U.N. Convention on the Reduction of Statelessness²² in 1961, but did not ratify it until some years later. She felt bound by her signature to this convention to make some provision for the retention of British nationality by those Ugandan Asians who did not become registered as Ugandan nationals. To this end, S.2(2) of the Ugandan Independence Act, 1962, provided for the retention of citizenship, by those Ugandans who were citizens of the U.K. and colonies before the appointed day (October 9th, 1962), until such time as they acquired Ugandan citizenship in accordance with the laws of Uganda. Section 2(1) of the Act made a similar provision for the retention of British protected status.²³

Many Asians shared little confidence in the Ugandan government, and they thus did not opt for Ugandan citizenship; or if they did, they ensured that certain members of their families did not, but opted for British, Indian or Pakistani citizenship or nationality. At one time it was discovered that none of the Asian members of Parliament were Ugandan citizens.²⁴ The Ugandan authorities felt concerned by this apparent lack of confidence, and also at the

²¹See also the new Constitution of 1967, article 6(3)(a), which is in similar terms. The term "other nationality" would appear to be applicable to those who were British protected persons, who are British nationals in international law. See CUTHBERT JOSEPH, *NATIONALITY AND DIPLOMATIC PROTECTION*, pub. 1969 at page 126.

²²For the text of the convention, see the I.C.L.Q., 1962, page 1090. Article 8(1) provides that: A Contracting State shall not deprive a person of his nationality, if such deprivation would render him stateless. Grounds for deprivation are, however, included in Articles 8(2) and 8(3) of the Convention. Of special interest, in the present context, is Article 8(3)(b) providing that such deprivation takes place on the ground:

That the person has taken an oath, or made a formal declaration of allegiance, to another state, or has given definite evidence of his determination to repudiate his allegiance to the Contracting State.

The above convention has received insufficient ratifications for entry into force.

²³See also British Protectorates, Protected States and Protected Persons Order, 1965, S.I. No. 1864, article 10. It is also possible to renounce this status: *ibid.*, Article 19; but if the renunciation does not result in the acquisition of another nationality within six months, the previous nationality is re-assumed.

British protected persons are British nationals according to international law: see also MERVYN JONES, *BRITISH NATIONALITY LAW*, pub. 1956, at page 194. We have been informed by Praful Patel, of the Ugandan Asian Resettlement Board, that such persons were granted entry to the United Kingdom on being expelled from Uganda.

²⁴See JUDITH LISTOWEL, AMIN, pub. Irish Universities Press, 1972, p. 112.

large amount of economic power exercised by the Asians.²⁵

It became clear during the presidency of Dr. Milton Obote, that certain Ugandan Asians who thought that they had acquired Ugandan nationality had not, in fact, done so; and that the large majority of them might become stateless on application for a new Ugandan passport being rejected.²⁶ This came about as a result of the fact that they had not submitted evidence of renunciation of citizenship or nationality within the ninety-day period allowed by section 6(2) of the Uganda Citizenship Ordinance.²⁷

If registration of the renunciation of their British citizenship did not take effect until after May 18th, 1964, section 2 of the British Nationality Act (No. 1) of 1964 came into operation to prevent them from becoming stateless, but if it took place at an earlier date, such persons would become stateless on refusal to renew their Ugandan passports.²⁸

The delay in submitting relevant evidence can be explained in some cases by the collusive attitude of the Ugandan authorities to such delays, and in others by the dilatory action of the new Ugandan citizens, or of the Ugandan authorities. It appears that, in some cases, persons who were registered as Ugandan citizens managed to retain their British passports, the Ugandan authorities conniving at the absence of renunciation of nationality or citizenship.

The Early Actions of General Amin

When General Amin came to power in 1971, it was thought that he would endorse the agreement which had nearly been reached with President Obote, increasing the number of vouchers to be issued to Ugandan Asians, and thus

²⁵Measures were taken to reduce these: see the Immigration Act, Act No. 19, of 1969; the Immigration Regulations issued in pursuance of section 18 of the act; and the Trade Licensing Act of the same year, 1969. Note that economic discrimination against non-nationals is permitted by article 2(3) of the International Covenant on Economic, Social and Cultural Rights, 1966: the legislation in question applied to non-citizen Asians.

²⁶Y. GHAI AND D. GHAI, *op. cit. supra*, note 1, at page 17.

²⁷Some of the applications for citizenship were not processed, if at all, for several years after the attainment of independence. In a case known to the writers, a Ugandan Asian was granted citizenship of Uganda in April 1965, but did not submit evidence of renunciation to the Ugandan authorities until March 1966, and consequently his Ugandan passport was confiscated. In this case, his British citizenship was deemed to have remained in existence in virtue of section 2 of the British Nationality Act (No. 1), 1964, and he was admitted to that country.

²⁸Section 2(1) of the British Nationality Act, 1964, which came into effect on May 18th, 1964, provides as follows:

A declaration of renunciation of citizenship of the United Kingdom and colonies may be made under section 19 of the principal act by a person who is not a national or citizen of any other country, and shall, if so made, be registered under that section if, but only if, the Secretary of State is satisfied that that person will, after the registration, become a citizen of some other country: and if that person does not become such a citizen within six months from the date of registration, he shall be deemed to have remained a citizen of the U.K. and Colonies....

Note the British Nationality Regulations, S.I. 1965, No. 1753: reg. 19, paras. 17 and 23, which empower the making of a declaration of renunciation to the British High Commissioner in countries within section 1(3) of the British Nationality Act, 1948.

permitted an increased outflow of emigrants to this country.²⁹ General Amin refused to endorse the draft agreement, and it continued to be felt by many that, despite the trade licensing and immigration legislation, the Asians still held a dominant economic position in Uganda. It was frequently alleged that Asians of non-Ugandan nationality, fearing that they would soon have to leave, accumulated deposits in foreign banks as a result of failing to declare the full revenues obtained from exports, and by means of other devices.

General Amin was swift to realise that Draconian measures taken by him against Asians would win him popularity. In early October 1971, all Asians in Uganda were required to report to census offices on October 12th in order to produce nationality documents, and as a result of the scrutiny of these documents, many Ugandan Asians had their passports confiscated,³⁰ and many of them were consequently rendered stateless for the reasons already explained.³¹

Although it appears to be generally agreed by international lawyers that states may not expel their own nationals,³² the position with regard to aliens and stateless persons is different, and will be explored at a later stage in this paper.

²⁹As is well known, such immigration was restricted by the "patrial" section of the *Commonwealth Immigrants Act*, 1968, amending section 1 of the 1962 Act. These acts have been repealed by the *Immigration Act*, 1971, which came into force on January 1st, 1973. Section 2(6) of this Act defines patrials as those having the right of abode in the United Kingdom. Sections 2(1)(a)-(d) and section 2(2) enumerate the classes of persons having a right of abode. Their practical effect is to discriminate in favour of those who are predominantly white British subjects, and who have emigrated, or whose families have emigrated, from the United Kingdom. It will be remembered that the Teheran Conference of the International Commission of Jurists treated the concept of partiality as discriminatory. Nigel Fisher, speaking in the House of Commons in 1968, stated that the patrial clause violated human rights and created second-class citizens: see *Parliamentary Debates, House of Commons, Volume 767, columns 1663-6*. See also the view of the European Commission of Human Rights expressed its decision as to the admissibility of the complaints in the *Patel* case, as to the discriminatory nature of the patrial clause, I.L.M., 1971, at pp. 9 and 40.

³⁰See Keesing's *Contemporary Archives*, January 1st-8th, 1972, at Column 25023. It is not certain that Uganda has broken any international obligations by taking this action. The Convention on the Reduction of Statelessness, article 8 of which prohibits the arbitrary deprivation of nationality, is not yet in force, and Uganda is not a party to it. In any event, the Ugandan action can be construed as merely declaratory of an existing state of affairs. Despite the provisions of article 15(2) of the Universal Declaration of Human Rights, which declaration has been very frequently referred to in later G.A. resolutions, it is uncertain whether there is a rule of international customary law, forbidding the deprivation of nationals of their nationality: see P. WEISS, *NATIONALITY AND STATELESSNESS*, pages 126-30. It may, however, be argued that the indiscriminate depriving of nationality, is an abuse of rights which engages international responsibility: see LAUTERPACHT, *THE FUNCTION OF LAW IN THE INTERNATIONAL COMMUNITY*, page 310. If it could be shown that the deprivation of nationality, if it can be so considered, was with the object of expelling the Asians, it would seem a fortiori to be an abuse of rights, but there seems to have been no such object in the mind of General Amin, at the time of the deprivation of the Asians of their nationality.

³¹As already pointed out, some of the renunciations of nationality did not have such an effect. See the statement of Mr. Carr the Secretary of State for Home Affairs, to the House of Commons to this effect: *Weekly Hansard*, Issue No. 910, 17th-19th October 1972, column 262. See also Issue No. 913, Column 203.

³²See PAUL WEISS, *NATIONALITY AND STATELESSNESS*, pub. Stevens at page 57; note also the U.N. Study on Expulsion of Immigrants, U.N. Doc. St/EOA 22, at paragraph 35.

It may at present be noted that some have argued that a denaturalising state must admit its former nationals, but this contention is debatable.

In December 1971, General Amin addressed a meeting of representatives of Asians from all parts of the country in Kampala.³³ He accused certain of the Asians of lack of loyalty to Uganda, refusal to integrate, and of the commission of a number of offenses. These included abuse of Ugandan exchange control regulations; the smuggling of commodities such as sugar abroad; the hoarding of goods in order to create an artificial shortage; renting premises to Africans at inflated prices; unfair competition; the evasion of income tax and the corruption of officials. President Amin also announced his intention to cancel pending applications for citizenship. He stated that the applicants might renew their applications, but that such renewed applications would not be treated favorably unless the Asian community attempted to integrate themselves.

The Asian leaders replied to General Amin's statement in a reasoned memorandum addressed to the president, which memorandum contained a powerful defence of the position of the Asians.³⁴ It emphasized, *inter alia*, the minority position of the Asians; their inability to effect major social changes; the facts that Africans were also sometimes guilty of criminal offences, and were also prejudiced against intermarriage; and also challenged the legality of the president's decision regarding the applications for citizenship.

It would appear that the Asians were justified in doubting the constitutionality of this action, and it appears that the Ugandan authorities had no discretion to refuse to register those Ugandan Asians as citizens who complied with the requirements of sections 8(1) and 8(5) of the Ugandan Constitution of 1962, and of section 6(2) of the Uganda Citizenship Ordinance, 1962. Despite the 1966 revolution, these legal provisions remained in force at least until General Amin's assumption of power. The Asians' request, that the matter be referred to the Ugandan judges, appears justified. About 12,000 Asians were affected by the president's decision which has just been mentioned.

The Expulsion of the Ugandan Asians, and the Expropriation of Their Property

For several months, no further action was taken with regard to the Asian community.³⁵ On August 4th, 1972, President Amin announced that he would ask Britain to take over responsibility for the Ugandan Asians holding British

³³See Keesing's *Contemporary Archives*, *supra*, Jan. 18th, 1972, at page 25023, and also Justin O'Brien, *op. cit.*, *supra*, note 1, at pages 25-32, for the full text of the president's statement.

³⁴For this memorandum, see the work cited by Justin O'Brien at page 32.

³⁵However, in February 1972, General Amin visited Colonel Gadhafi of Libya, who was himself responsible for the expropriation of Italian property.

passports, as they were sabotaging the economy.³⁶ On August 9th, the president announced that he had signed a decree revoking, from that date, most entry permits and certificates of residence of non-citizen Asians. Holders of cancelled entry permits and certificates were given 90 days to leave Uganda; certain categories of persons were exempted from the decree.³⁷

According to section 9(1) of the Immigration Act, 1969 (no. 19), no person may remain in Uganda unless he is in possession of an entry certificate which is valid, a certificate of residence or a pass. This section is applicable to all non-citizen Asians who have not been exempted by the minister.

Despite talks between Geoffrey Rippon, Chancellor of the Duchy of Lancaster, and President Amin, the latter refused to alter his decision, although he changed his mind about a later decision to expel Asians of Ugandan nationality.³⁸ Expellees were sometimes treated with considerable brutality.³⁹ On October 19th, 1972, President Amin announced that, "because of continued sabotage by the Asians," all Asians with Kenyan, Tanzanian and Zambian citizenship would have to leave Uganda by November 8th. In early October, 1972, a further check on the documents of Ugandan Asians took place.⁴⁰ The threat of being placed in internment camps was responsible for a rapid exodus of the Asians.

President Amin wrote to Dr. Kurt Waldheim, the Secretary General of the United Nations who had been exercising his good offices on behalf of the Asians, stating that he had no intention of confiscating the property of the

³⁶For his early statements on the expulsions, see the Uganda Argus, August 5th and 21st, 1972, each at page 1, cols. 3-4; see Keesing's *Contemporary Archives*, Sept. 16th-23rd, 1972, at page 25469, and JUDITH LISTOWEL, AMIN, at page 143. The Asians were often accused of making improper payments abroad, and their accounts have been blocked: see Decree No. 18 of 1972, section 5. If they are unable to take their money out of the country, this may possibly itself amount to an expropriation. See WORTLEY, EXPROPRIATION IN PUBLIC INTERNATIONAL LAW, pub. 1959 at pages 108-9, and Christie, *What Constitutes a Taking of Property under International Law?* B.Y.I.L. 1962, at pages 331-3.

³⁷For the classes of person exempted, see S.I. No. 124 of 1972, Uganda Gazette Supplement, August 11th, 1972. For the decree, see Supplement to the Uganda Gazette of August 11th, 1972. It applied to Ugandan Asians of British, Indian, Pakistani and Bangladesh citizenship. Reference should also be made to Decree No. 30, of October 25th, 1972. Despite the apparent power to exempt classes of persons, almost all the non-citizens have left of their own volition. The reason for the amendment of the decree was that stateless Asians were not subject to expulsion, according to Decree No. 17. Decree No. 30 thus provided for the expulsion of any other persons of Indian, Pakistani or Bangladesh origin, extraction or descent. It is clear that the form of words employed in this decree might give rise to difficulties in interpretation. The decree also provided for the expulsion of subjects of Zambia, Tanzania and Kenya who were of Asian origin, extraction or descent.

³⁸The representations made to him by President Nyerere, as well as those of the Ugandan National Union of Students, may have influenced him in making this decision. For the comments of President Nyerere on General Amin's decision, see Keesing's *Contemporary Archives*, 1972, September 16-23rd, at page 25470. President Kaunda of Zambia called the expulsion of Asians of non-Ugandan nationality "terrible, abominable, horrible, and shameful." See the article by R. West, *What Africa thinks of Amin*, *New Statesman and Nation*, Sept. 11th, 1972, p. 345.

³⁹See the report in The Times of October 10th, 1972, at page 8. See also JUDITH LISTOWEL, *op. cit.*, *supra*, note 2, at page 155.

⁴⁰See Keesing's *Contemporary Archives*, Dec. 2nd-9th, 1972, page 25599.

Asians without the payment of compensation. He stated that the Asians had been asked to specify agents who would look after the property until its sale.⁴¹ Two decrees were made concerning the declaration and sale of the assets of the non-citizen Asians,⁴² which decrees were made retrospective to August 9th, 1972.⁴³ The first decree provided that departing Asians might not transfer immovable property, bus companies, farms including livestock or businesses to any other person.⁴⁴

They were also not allowed to mortgage such property,⁴⁵ and in the case of companies they were not allowed to issue new shares, change the salaries or terms of employment of staff, appoint new directors or alter their conditions of service.⁴⁶ Departing Asians were required to make a declaration of their assets, which declaration would be registered with the Ministry of Industry and Commerce.⁴⁷ Failure to make the necessary declaration resulted in vesting of the property in the government.⁴⁸ Attempted private sales were made punishable by fine or imprisonment.⁴⁹ The second decree, which amended the first, granted agents appointed according to the first decree power of sale, leasing, acquisition and transfer of Asian property, with the consent of the Abandoned Property Custodian Board.⁵⁰

The agents were not permitted to deal with the property in any way which frustrated the declared policy of the government.⁵¹ This board consisted of six

⁴¹See Keesing's *Contemporary Archives*, Dec. 2nd-9th, 1972, page 25599. Accountants and lawyers sometimes undertook the task of acting as agents.

⁴²See Decree No. 27, Uganda Gazette supplement of 1972, 13th October, 1972, as amended by Decree No. 29, Uganda Gazette supplement of 1972, 27th October, 1972. The Ugandan Asians were required to declare their assets on two forms, PRO/1 and PRO/2, enclosing copies of accounts for the last two years, and lists of contracts.

⁴³See Decree No. 17, Article 9. Some of the Asians had left the country before they had the opportunity to appoint agents. Some non-citizen Asians managed to sell property or otherwise dispose of it to citizen Asians, Africans and non-citizens who, it was thought, might be exempted from expulsion before they departed from Uganda. It is thought that General Amin retrospectively invalidated transactions which occurred before October 4, partly because he considered that dispositions of property had taken place over which the Ugandan authorities had no control, in respect of which he may have entertained doubts regarding their economic benefits to Uganda.

⁴⁴Decree No. 27, article 1(a).

⁴⁵*Ibid.*, article 1(b).

⁴⁶*Ibid.*, section 1(c).

⁴⁷*Ibid.*, sections 2 and 3. The owners were required to appoint agents for the purpose of negotiating with the government: *Ibid.*, section 2(2)(d). See also section 4 of the decree for the disposal of applications for purchase.

⁴⁸*Ibid.*, section 4(5).

⁴⁹*Ibid.*, section 5.

⁵⁰Decree No. 29 section 1. Abandoned property includes any business enterprise, real property, vehicle and any other chattel which in the opinion of the Board, may be sold at a reasonable price: *ibid.*, section 16(5)(c).

⁵¹*Ibid.*, section 1(6). Agents must carry out the directions of the board, *ibid.*, section 1(5). It transpired in practice that many agents were unable to get control of the property in respect of which they were appointed. The contemplated sales of such property may be regarded as forced sales from the viewpoint of public international law, and hence, when they occur, as expropriations: see WORTLEY, *EXPROPRIATIONS IN PUBLIC INTERNATIONAL LAW*, B.Y.I.L. 1962, page 307 at page 324 *et seq.*

ministers.⁵² Property was vested in it which had vested in the government in virtue of section 4(5) of the previous decree. The board was also empowered by statutory order to declare property to be vested in it which was abandoned by a departing Asian, or left in such a way that no adequate arrangement had been made for its proper and efficient management.⁵³ The decree made provision for the payment of compensation in respect of such property.⁵⁴ It is possible to appeal from the decision of the valuers who assess the compensation to a tribunal, and thence to the High Court.⁵⁵ No time limit is stated within which compensation must be paid. Ugandan exchange control regulations prohibited payments from being made outside the "scheduled territory" without the consent of the minister.⁵⁶

The Ugandan Asians thus had to leave without their property, and, consequently, social security payments have been made to many of them in the U.K. A large number arrived there destitute.

Ugandan Asian property which was abandoned has been occupied by Africans⁵⁷ and foreign banks have received no satisfaction in respect of mortgages, debentures or liens thereon.⁵⁸ The occupation of the property in question has been by virtue of General Amin's decree of Feb. 9th, 1973.⁵⁹ The properties vested in the government have generally been let to Africans at a rent.⁶⁰ The minister responsible for fixing the rent is the Minister of Mineral and Water Resources. The valuation of the minister is final.⁶¹

The rentals accruing from such properties are to be paid into a fund, and compensation is payable from this fund to the former owners of the dwelling houses and business premises in question.⁶² The decree defines departed Asians

⁵²Decree No. 29, section 8. For a list of properties which vested in the board, according to section 12(2) of Decree No. 29, see S.I. No. 169 and S.I. No. 174 of 1972.

⁵³*Ibid.*, section 12(2). The board is given the same power of sale or other disposition over the property of the departing Asian.

⁵⁴*Ibid.*, section 16(1).

⁵⁵*Ibid.*, sections 16(2) to 16(5).

⁵⁶Decree No. 18, Uganda Gazette Supplement, August 11th, 1972, section 5. The Scheduled Territory, according to S.I. No. 111 of 1965, was composed of Uganda, Kenya and Tanzania, but is now apparently treated as being limited to Uganda itself, according apparently to a circular issued by the State Bank of Uganda in early 1972. The writers have been so informed by a senior official of National and Grindlay's Bank. Departing Asians were apparently only allowed to take L50 with them, and their accounts have recently been transferred to the Commercial Bank of Uganda.

⁵⁷See the report in the East Africa Standard, pub. Nairobi, Jan. 11th, 1973 at page 1. *Also see* Voice of Uganda pub. Kampala, April 5th, 1973, page 3.

⁵⁸Note decree no. 29 of 1972, section 15, which forbids a creditor of a departing Asian from exercising any right without the permission of the Abandoned Property Compensation Board, and see also the decree of Feb. 9th, 1973, section 8, which enables the minister to disclaim or vary obligations with which property vested in the government is burdened.

⁵⁹Decree No. 5, 1973. The decree was made retrospective to November 8th, 1972: Many of the properties had already been allocated in the period between November and February 1973.

⁶⁰*Ibid.*, section 3(3). The writers have been informed by Praful Patel, a member of the Uganda Resettlement Board, that favouritism has been shown to Muslim members of the armed forces.

⁶¹*Ibid.*, section 9.

⁶²*Ibid.*, sections 6 and 7(a).

as non-citizen Asians and Uganda citizen Asians whose property is abandoned.⁶³ The latter category seems to include those Asians who departed in response to General Amin's original intention to expel all Asians. The Decree of Feb. 19th, 1973 is stated to prevail over the provisions of Decree No. 27 of 1972, as amended by Decree No. 29, as far as its provisions are inconsistent with them.⁶⁴

Foreign banks which some departing Asians appointed as agents have not been allowed to exercise their functions.⁶⁵ It seems that both abandoned property and certain properties in respect of which agents were appointed have been vested in the government.⁶⁶ The properties have been allocated to private individuals, four cabinet committees being concerned with this work. At first, the allocation tended to be to Baganda business men, but by March 1972, they were generally to Muslim soldiers. The Abandoned Property Custodian Board has not exercised any function with regard to the property.⁶⁷

The bank accounts of the expelled Asians which had been blocked, have recently been transferred to the Commercial Bank of Uganda.⁶⁸ The British High Commissioner in Kampala asked the Ugandan government whether the properties which Africans were occupying had been sold, leased or let at a rent, and received no reply.⁶⁹ No money has yet been paid into the Asian accounts by

⁶³*Ibid.*, section 11.

⁶⁴A decree was passed by President Amin in August 1973 making provision for the management of the estates of missing persons. It does not appear to have any application to the properties of the departed Asians. Section 5(b) of Decree No. 20 of 1973 states that any person (which must include the state) likely to be adversely affected by the grant of an order under the decree may lodge a memorandum of objection stating that the person named in the notice as missing authorised in writing some other person to manage his estate. Thus the properties in respect of which the agents were appointed cannot be within the purview of the decree. Nor can properties in respect of which agents were not appointed as those vested in the Ugandan government in virtue of section 12(1) of Decree No. 29 of 1972. It is understood that the decree in question was passed in order to provide for the management of property belonging to political opponents of President Amin, who had left the country or who had disappeared.

⁶⁵Apparently one agent who attempted to take possession of the property in respect of which he was appointed, which he is entitled to do according to section 2(4) of decree No. 27 of 1972, was imprisoned for a short time for theft.

⁶⁶The writers have been so informed by an official of the Property Records section of the Foreign Office.

⁶⁷The writers thank Dr. Yash Tandon of the L.S.E. for this information.

⁶⁸See the statement of Sir Alec Douglas-Home, Foreign and Commonwealth Secretary, in the House of Commons on December 19th, 1972. *Parl. Debates, Weekly Hansard, Issue No. 912, December 15-22nd, columns 1126-1127.*

⁶⁹The writers are grateful to Praful Patel of the Uganda Resettlement Board for the information in question. They have been informed by a spokesman for the Foreign and Commonwealth Office, that the British High Commissioner has made repeated representations to the Ugandan authorities since August 1972, sometimes questioning the legality of the decrees, and sometimes questioning the apparent failure of the Ugandan authorities to follow the procedure laid down by them. Thus the Foreign Office are at present making representations on behalf of a Ugandan Asian who had left the country before the decrees came into effect, such that he was not a "deporting" Asian according to Decrees No. 27 or 29, yet his property was confiscated. The Uganda government has agreed to negotiations concerning compensation for the departed Asians, but has not yet agreed upon a time when they might begin.

way of compensation and no compensation determined by the Abandoned Property Compensation Board. It seems that no legal representatives acted for the persons whose property was taken.

During the period from 30th Aug. 1972 to 31st March 1973, 27,036 persons arrived in the U.K. from Uganda as a result of President Amin's decree.⁷⁰ It appears that practically all the Asians were evacuated by the Nov. 8th deadline.⁷¹

The British Governmental Reaction to the Expulsion of the Ugandan Asians

It was admitted by the Home Secretary in the House of Commons when the debate took place on the Commonwealth Immigrants Act of 1968, that if East African Asians were thrown out of work and ejected, we should be under an obligation to admit them.⁷² The obligation in question might be considered either as a correlative of the limited right of expulsion vested in a state according to international law, and owed both to the expelling state and to the international community,⁷³ or it may be considered as an obligation owed by the receiving state to its nationals.⁷⁴ The latter view has come into prominence in recent years, and may receive some support from the statements of the delegates of Kenya, Uganda and Pakistan at the London Conference of Commonwealth leaders of 1969.⁷⁵

Mr. Rippon's statement of August 13th, 1972 appears to support the traditional view. In his words:

⁷⁰Cmnd. 5296, para 1.

⁷¹*Ibid.*, para 10.

⁷²Parliamentary Debates (House of Commons, 5th Session), Volume 759, column 1501.

⁷³This traditional view is upheld by PANHUY, *THE ROLE OF NATIONALITY IN INTERNATIONAL LAW*, pub. 1959, at pages 55-6. See also FRANCOIS, *HANDBOEK VAN HET VOLKENRECHT*, 2nd ed., Vol. 1, 1949, at page 483; LESSING, *DAS RECHT DER STAATSANGEHÖRIGKEIT UND DIE ANERKENNUNG DER STAATSANGEHÖRIGKEIT ZU STRAF UND SICHERUNGSZWECKE*, 1937, at page 117, and Duynstee, *Vreemdelingenrecht*, 1956, at page 55. The report was submitted to the Netherlands International Law Review, *Mededelingen*, No. 36 (March 1956) page 53.

⁷⁴Note the interesting discussion in Plender, *INTERNATIONAL IMMIGRATION LAW*, pub. Sythoff, Leyden, 1972, at pages 71 *et seq.* The right to enter one's own country is protected by the Universal Declaration of Human Rights, article 13(2), the precise legal effect of which is difficult to determine; the Covenant on Civil and Political Rights, article 12(4), which covenant is not yet in force, and by the Convention on the Elimination of All Forms of Racial Discrimination, article 5(d)(11). Britain is a signatory of this convention, but Uganda is not. The British reservation to the convention as of 1971, stated that the U.K. does not regard the Commonwealth Immigrants Acts 1962 and 1968 as involving racial discrimination within the meaning of article 1(1) of any other provision of the convention, and reserves the right to continue to apply these acts. It appears that any state party to the convention might argue that this reservation is incompatible with the objects and purposes of the convention, and invoke the jurisdiction of the International Court, which would decide the compatibility in accordance with article 22 of the convention.

⁷⁵See *The Times* of January 7th, 8th and 9th of that year, and also the article by Plender: *The Exodus of Asians from East and Central Africa*, A.J.C.L. 1971, page 281 at p. 320.

If people are expelled, and they are U.K. passport holders,⁷⁶ then however unreasonable the expulsion may be, and however unjust the conditions in which it was brought about, we have to accept the responsibility.⁷⁷

It is noteworthy that the British authorities at no stage tried to argue that the Asians had no genuine link with Britain. It would have been difficult for this country to do so for many reasons. The Principle in the *Nottebohm* case⁷⁸ is probably applicable only to the possibility of nationality to a state with which the claimant has substantial connection, when an international claim is made by the national state of the claimant. If the principle of the *Nottebohm* case is applicable in the field in question, it is suggested that the British Asians had sufficient links with the United Kingdom by birth in a British protectorate, and descent from persons born in Imperial India to enable them to enjoy a right of entry.

Had Britain not admitted these Ugandan Asians who were her citizens or nationals, and who had nowhere else to go, she would probably have been acting in breach of her obligations fixed by the European Convention of Human Rights. Although Britain is not a signatory to the Fourth Protocol to this Convention, Article 3(4) of which provides that no person shall be deprived of the right to enter the state of which he is a national, refusal to admit nationals who have nowhere else to go might be regarded as contrary to certain of the provisions of the convention.

In the *Patel* case, the European Commission of Human Rights declared certain of the complaints of 25 East African Asians admissible, insofar as they declared possible violations of articles 3, 5, 8, 12 and 14 of the convention. The refusal to admit nationals who had nowhere else to go, or to grant them permanent entry, was thus held to be a possibly degrading treatment within the ambit of article 3 of the convention, which treatment might also be so constituted as discrimination on the ground of race.⁷⁹ The decision of the European Commission in the *Patel* case may have helped to reinforce Britain's already expressed intention to fulfil her international obligations. In his television broadcast of August 31st, 1972, Sir Alec Douglas-Home stated: "Under international law, a state had a duty to accept those of its nationals who have nowhere else to go. . . ."

⁷⁶Both international and national tribunals have taken cognisance of passports to determine a person's national status, but passports are not conclusive evidence of nationality. For a relevant decision of an international tribunal, see *Kahane (Successor) v. Parisi and the Austrian State*, J.A.D. (1929-30), No. 31, and for one of a national tribunal, see the Indian case of *Ghaurul Hassan v. State of Rajasthan*, [1958] A.I.R. (Raj) 172.

⁷⁷*Keesing's Contemporary Archives*, 1972, September 16-23, page 25469. See also Lord Hailsham's statement in the House of Lords to the same effect on September 14th, 1972, Parliamentary Debates, House of Lords, Weekly Hansard, September 11th-October 16th, 1972 at Cols. 487-507.

⁷⁸(1955) I.J.C. Rep. 4.

⁷⁹I.L.M. 1971, at p. 44. The decision in the *Patel* case may also have some relevance to the plight of the Kenyan Asians and similar minorities.

Sir Alec's statement does not express the view that a state has an unlimited duty to permit the entry and settlement of its nationals, but only of those who have nowhere else to go.⁸⁰ It corresponds with the traditional view that individuals have themselves no right to enter their state according to international law.⁸¹

The British government set up a special board to handle the resettlement of British passport holders.⁸² Mr. Godber, the Minister of State at the Foreign and Commonwealth Office, had talks on August 30th, 1972, in Vienna and Geneva with Dr. Waldheim and with Prince Sadruddin Aga Khan, the U.N. High Commissioner for Refugees. In his television broadcast of August 31, 1972, Sir Alec announced the cancellation of the proposed loan to the Ugandan government. Britain also approached 20 other governments for assistance with the problem of the resettlement of the Ugandan Asians.

Despite British approaches to General Amin, and the mediation of General Mobutu, President of the Republic of Zaire, General Amin refused to extend his deadline for the expulsion of the Ugandan Asians. On September 27th, 1972, the Foreign and Commonwealth Secretary asked the General Assembly to put the question of the expulsion of the Ugandan Asians on its agenda. The British request was, however, withdrawn in the General Committee on September 29th, 1972, as it was thought that the mediation of General Mobutu would result in concessions.⁸³

In his statement in the House of Commons of October 18th, 1972,⁸⁴ Mr. Carr mentioned the efforts made to secure the resettlement of the Ugandan Asians in other countries. He also stated that, although stateless Asians would not be admitted,⁸⁵ those Ugandan Asians who had not genuinely renounced their

⁸⁰The right of nationals to enter their country of origin is safeguarded by certain national constitutional provisions. Amongst many examples one may instance article 16 of the Italian Constitution and article 81 of the Kenyan Constitution of 1969. See also the Canadian case of *R. v. Soon Bin An* (1941-42) A.D. 273, in which it was stated that one of the rights which flows from Canadian citizenship is the right to return the native land. It may be doubted whether there is yet a sufficient element of state practice or *opinio juris* to regard such a right as existing in international customary law.

⁸¹Britain's acceptance of her responsibilities won widespread international acclaim. See, for example, the statement made by Mr. Swaran Singh, Indian Minister of External Relations, in *Lok Sabha* on September 4th, 1972: Keesing's *Contemporary Archives*, December 2nd-9th, 1972, page 25600.

⁸²Keesing's *Contemporary Archives*, December 2nd-9th, 1972, page 25597.

⁸³*Ibid.*, at page 25599.

⁸⁴Weekly Hansard, Issue No. 910, 17th-19th, October, 1972, columns 262 *et seq.*

⁸⁵This policy has resulted in great hardship, and the splitting up of families. Note Mr. Carr's statement to the House of Commons concerning the persons in question on January 25th, 1973: House of Commons; Parliamentary Debates, Weekly Hansard, Issue No. 920, at column 663. Note also the speech of Mr. David Steel on February 21st, 1973, *ibid.*, Issue No. 924, columns 599 *et seq.* It is interesting to speculate whether the close relations of one of the expellees in question could successfully argue that interference with their family life constituted a breach of article 8 of the European Convention of Human Rights. Certain heads of families, 300 in number, whose wives and children were in England, were admitted as a result of M. Carr's discussions with the U.N. High

British nationality would be.⁸⁶

These persons would seem to include those to whom a Ugandan passport had been issued, although they had not, in fact, renounced British nationality, and persons who benefitted by the British Nationality Act, 1964, No. 1 section 2, and article 19 of the British Protectorates Order, 1965.⁸⁷ It also appears that in some cases, the Ugandan authorities had issued cyclostyled letters after issuing a citizenship document, requiring the renunciation of British nationality within 90 days of the issue of the letter.

When a check was made on the nationality documents of Ugandan Asians, the Ugandan authorities refused to accept the authenticity of the issue of these letters, and many Asians were then treated as never having acquired Ugandan nationality. As the British High Commission, it has been stated, compared the dates of the letters and of the renunciation, not of the citizenship documentation and the renunciation, the Asians received no assistance from the British Nationality Act (No. 1), 1964, where the period of time which elapsed between the issue of the letters and the renunciation was less than 90 days.⁸⁸

Commissioner for Refugees: see Parliamentary Debates, Weekly Hansard, Issue No. 924, 16th-22nd; February, 1973, written answers at columns 146-7. He undertook to look sympathetically at certain other cases.

⁸⁶Wives, aged parents and dependant children of U.K. citizens and nationals were also admitted: see Mr. Carr's statement to the House of Commons on November 13th, 1972. Mr. Carr also stated that apart from the admission of dependents, the only other persons who were admitted were those who could claim no citizenship. Mr. Enoch Powell attempted to dispute this fact in a question which he put to Mr. Carr on November 14th, 1972, in which he stated that a man born in Baroda in 1941, who presumably obtained Indian citizenship in conformity with article 5 of the Indian Constitution, was admitted to this country. See Parliamentary Debates, House of Commons, Weekly Hansard, Issue No. 914, 10th-16th November 1972, columns 37 and 97. Wives and dependents whose husbands or fathers were not British passport holders, but who were themselves the holders of such passports were admitted to the U.K.

⁸⁷Owing to the work of the British High Commissioner in Kampala, 2,000 were admitted. However, certain Ugandan Asians who came to the U.K. could not prove their British nationality, and hence were deported, see Parliamentary Debates, House of Commons, Weekly Hansard, Issue No. 914, Nov. 13th column 35, for Mr. Douglas-Mann's questions as to the circumstances of the deportation. One wonders as to the compatibility of the deportation with the Convention on the Status of Refugees, 189, U.N.T.S. 150, article 33(1) of which provides: "No contracting state shall expel or return a refugee in any manner whatsoever to a territory where his life or freedom are threatened on the ground of race, religion, nationality membership of a particular social group or political opinion." It seems that, should the U.K. return a refugee in such circumstances, she might be acting in breach of an international obligation, if it were known that the only territory to which an expelled person could go was such a territory; this might seem to be the case. However, it is possible to distinguish between expulsion and refoulement, (*i.e.*, as used by some international lawyers, the returning of people across a frontier which they had improperly crossed), and to argue that the obligations of the convention in question only apply where the refugee is already admitted. This interpretation was given by the Swiss and Netherlands delegates to the conference which concluded the Convention: see Summary Records of the Conference, U.N. Doc. A/CONF 2/SR 25, page 21. It does not, however, appear consistent with the wording of article 33, which refers to "Expulsion or return."

⁸⁸The British authorities have based their action on section 24(2) of the Uganda Citizenship Ordinance, which states:

The minister or any officer of the government authorised in that behalf by the minister may, in any case in which he is satisfied that a person to whom subsection (6) of section 12 of the

Owing to the fact that other members of the international community were able to absorb British, Ugandan and stateless Asians,⁸⁹ the influx into this country was less than had been expected. As many of the individuals in question have considerable technical, professional and commercial expertise, they should be considerable assets to the community and their generally middle-class or skilled artisan status should lessen problems of integration.⁹⁰

The British government has recently been discussing the question of compensation for the Ugandan Asians with the Ugandan authorities⁹¹ but the latter have not yet entered into formal negotiations. In his reply to questions put to him by Mr. Sidney Chapman, Mr. Richard and Mr. George Cunningham, Sir Alec Douglas-Home, Secretary of State for Foreign and Commonwealth Relations, stated that compensation negotiations were proceeding on behalf of the expelled Asians and that compensation should be paid in transferable currency.⁹² On March 21st, 1973, Lord Balniel, Minister of State for Foreign and Commonwealth Relations, stated that the Ugandan government was expected to pay full compensation in accordance with international law, but in view of the fact that 2,000 British citizens remained in Uganda, caution should be exercised before resort to retaliatory measures.⁹³

Some have argued that Uganda should be suspended or expelled from the commonwealth, and also denied commonwealth preference.⁹⁴

Heads of families of citizens of the United Kingdom and Colonies who were expelled from Uganda, have been asked by the Foreign and Commonwealth

Constitution refers is, by reason of any circumstances not attributable to such person's default or neglect, unable to renounce his citizenship of some country other than Uganda, or to take the oath of allegiance, or to make or register any such declaration as is specified in the Fourth Schedule to this act within the time presented in relation to that person in that subsection, or any later date declared under this subsection, declare that the specified date in relation to this person shall be such later date as will permit that person an opportunity of doing all acts, or all such acts as remain to be done.

Quite a number of Ugandan Asians appear to have been affected by section 24(2), and it is to be hoped that the British government may adopt a more sympathetic attitude to them in future.

⁸⁹Canada and India were especially helpful in this respect. Canada took 6,000 stateless, Ugandan and British Asians; India took a large number of British Asians on a temporary basis, as well as accepting responsibility for her own nationals.

⁹⁰For an account of the resettlement of the Ugandan Asians in the British, see the Interim Report of the Ugandan Resettlement Board, Cmnd. 5296.

⁹¹They have not yet made any valuation of the properties taken over, and until they make such valuations, the local remedies provided by sections 16(2)-16(5) of decree No. 29 of 1972 are inoperative. Quarae whether the ability of property owners to make representations concerning the valuations, or to take part in any legal proceedings concerning their property, would be considered a denial of justice: see XV Government of Sweden (1959), European Year Book of Human Rights, (1958-9), at page 354.

⁹²Parliamentary Debates, House of Commons, Weekly Hansard, Issue No. 925, 26th Feb.-2nd March 1973, cols. 1475-1480. The Harvard Draft of 1961, 55A J.I.L. (1961) 545, Articles 10, 12 and 39, requires payment in a convertible currency.

⁹³Parliamentary Debates, Weekly Hansard, Issue No. 928, March 16th-23rd, cols. 626-629.

⁹⁴See Mr. Cunningham's statement in the House of Commons on March 21st, 1973, suggesting Uganda's suspension from the Commonwealth, and the withdrawal of preferences, Parliamentary Debates, House of Commons, Weekly Hansard, Issue No. 928, 16th-22nd March 1973, Cols. 619-26.

Office to fill in a form, giving details of their assets in Uganda for the information of H.M. government. They have not been asked to estimate their loss of profits, which may, according to some authorities, be claimed in the case of discriminatory expropriation.⁹⁵ It is not clear whether British protected persons may fill in this form, although the British government is competent to make claim in their behalf.⁹⁶

International Reaction to the Expulsions

Although the British acceptance of their obligations won the respect of more moderate members of the world community, no General Assembly resolution was passed in 1972 on the question of the expulsions. While there have been a number of mass expulsions since 1945, the level of activity of the political organs of the United Nations in the area of mass expulsions has perhaps been disappointing. Many emergent states have minorities whom they may distrust, and they are, consequently perhaps, reluctant to condemn the policies of other states.⁹⁷

The Human Rights Sub-Commission on the Prevention of Discrimination and the Protection of Minorities showed itself reluctant to put the question of the rights of non-citizens on its agenda in 1972, and it failed to condemn discrimination in expulsion policies.⁹⁸

On September 27, 1972, Sir Alec Douglas-Home asked the General Assembly which was then holding its 27th session, to give urgent consideration to the problem of the Ugandan Asians. He stated that the Ugandan action of taking property without the assurance of prompt compensation was an illustration of degradation and intolerance.⁹⁹ He also emphasized the inadequacy of the deadline given for the evacuation of the Ugandan Asians. He

⁹⁵BROWNIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW*, 2nd. Ed. page 524, fn. 5.

⁹⁶MERVYN JONES, *BRITISH NATIONALITY LAW*, Pub. 1956, page 195.

⁹⁷It is noteworthy that the Afro-Asian Legal Consultative Committee's final Report on the Status of Aliens of 1961 provides merely that states shall have the right to order the expulsion or deportation of an undesirable alien in accordance with their local law.

⁹⁸See the letter of Sept. 28, 1972, from the British member of the Commission, Mr. R.R. James of Sussex University, to the Times. Owing to his pressure, the matter was eventually placed on the Commission's agenda: see also Commission on Human Rights: Sub-commission on Prevention of Discrimination and the Protection of Minorities, 25th Session, Volume 11, E/CN 4 Sub. 2SR 651, 656-663.

⁹⁹Note also the remarks of Mr. McCarthy, the British delegate at a later stage of the same session of the General Assembly. The remarks are fully reported in the *East African Standard* of Dec. 21st, 1972, at page 1. The assembly was considering a draft paragraph endorsing a Trade and Development Board resolution, which would leave expropriations to the domestic jurisdiction. Mr. McCarthy stated expropriations must be for a public purpose, the property must not be taken on a discriminatory basis, and prompt, adequate and effective compensation should be paid for it. The legality of expropriations had, he said, to be decided according to international law. He expressed his doubts as to the Ugandan ability to pay compensation. Mr. Okelo, the Ugandan delegate, stated that compensation would be paid in respect of the take-over of foreign companies. General Assembly, 27th Session, Provisional Verbatim Record, 2115th Meeting, 19th December, 1972. A/PV2115.

asked the members of the United Nations to help with the problem of resettlement and to call on General Amin to extend his arbitrary and inhumane deadline of 90 days, and to allow the Asians expelled to take their property with them. On the same day, Sir Colin Crowe, the U.K. Permanent Representative at the U.N., sent a letter to Dr. Waldheim proposing that the question of the expulsion of the Ugandan Asians be put on the agenda.¹⁰⁰

When the General Committee of the Assembly met, Sir Colin Crowe emphasised the urgency of the matter and mentioned that the hardships caused by the collective expulsion of a group raised issues germane to the wider purpose of the Charter. He stated that members of the organisation had the obligation to take joint and separate action to promote respect for and observance of human rights.¹⁰¹

His statement does not, however, make it clear whether he considered all collective expulsion as being contrary to the human rights provisions of the Charter,¹⁰² or merely expulsions accompanied by special hardships.

Mr. Grace Ibingira, the Ugandan delegate opposing the U.K. draft resolution, which invited the Secretary-General to continue to use his good offices, and urged Uganda to respond to the initiatives of the Secretary-General regarding time limits, and the transfer of the assets of the Asians, stated that the matter was within the domestic jurisdiction of Uganda. He also said that the Secretary-General was already negotiating with Uganda, and could do so without a resolution. The Ugandan Asians were a relic of colonialism, but his government would be responsible for their safety and their adequate compensation. Owing, as has already been pointed out, to the mediation of General Mobutu, the British delegation did not press for the inclusion of the item on the agenda.¹⁰³

It might have been possible to ask for the imposition of mandatory sanctions against Amin, and Britain would probably have been supported in the request for such sanctions by certain African members of the Commonwealth and India, had it not been realised that any attempt to impose sanctions might have meant that the departing Asians were subjected to additional hardship and cruelties. The determination, according to Chapter 7 of the Charter, of whether a state has been guilty of a threat to the peace, breach of the peace or act of aggression is a political one, and thus it would not have been difficult to impose the sanctions mechanism of the United Nations, given a willingness to do so.

¹⁰⁰Keesing's *Contemporary Archives*, 1972, Dec. 2nd-9th, page 25599.

¹⁰¹Note especially article 56 of the Charter.

¹⁰²It seems that France cited both the Universal Declaration of Human Rights, and the human rights provisions in the Charter in protesting about the collective expulsion of French nationals from Egypt in 1956. For the interesting rejoinder of Mr. Mahgoub of the Sudan to the French contention, see G.A.O.R., 11th Session, 624th plenary meeting, 11th December, 1956, pages 745-746.

¹⁰³See G.A.O.R., 27th Session, General Committee, 206th meeting; Press Releases GA/4618 and GA/4622.

Three international agencies assisted in solving the problem of the resettlement of the Ugandan Asians, namely the United Nations High Commissioner for Refugees,¹⁰⁴ the International Committee for European Migration, and the International Committee of the Red Cross. On October 10th, 1972, Mr. Godber had separate talks in Geneva on the problem of the stateless Asians with Prince Sadrudin Aga Khan, officials of the I.C.R.C. and Mr. John Thomas, the head of I.C.E.M.

On returning to London, he said that the problem arose, of providing the stateless Asians with some kind of travel document, such that they might leave Uganda and become the responsibility of the United Nations High Commissioner for Refugees, who provided finance for the care, maintenance and transportation of the refugees. The Ugandan authorities eventually agreed to the issue of temporary I.C.R.C. documents, on which were stamped the entry visa of the country agreeing to take the stateless Asians, or those of undetermined nationality.

The International Committee for European Migration coordinated the efforts of 15 Latin American countries to help stateless Asians, and also organised an airlift on behalf of 4,200 such Asians.

The International Legality of the Ugandan Expulsions

General Considerations

Collective expulsions of aliens in peacetime have taken place on a number of occasions since the war. It is doubtful what the precise rules of international law concerning collective expulsions are, and what effect, if any, the Charter of the United Nations, the Universal Declaration of Human Rights, and General Assembly resolutions concerning discrimination, have had in this area.¹⁰⁵ Most international arbitral awards concerning expulsions are concerned with individual expulsions. The most famous award concerning collective expulsions was that given by Queen Victoria in 1839, which decided that Mexico was justified in expelling a number of French citizens in time of war between the two countries.¹⁰⁶

Despite the paucity of directly relevant material, it is thought that the collective expulsion of Asians from Uganda may have been unlawful on several grounds. The Ugandan Asians were not allowed to submit reasons against their

¹⁰⁴See United Nations High Commissioner for Refugees, No. 3, December 1972, and the supplement thereto.

¹⁰⁵There is little post-war literature on the subject. For a discussion of the legality of the expulsions of Hungarians from Yugoslavia in 1934, see Lubenhoff, *Die Völkerrechtliche Lage auf den Balkan*, ZFAÖVR 1934, at 127. For a discussion of the post-war expulsions of Germans from Poland; see also Skubiszewski, *Le Transfert de la Population allemande*, CAHIERS POLOGNE-ALLEMAGNE, 1959 at page 42.

¹⁰⁶LAPRADELLE ET POLITIS, RECUEIL DES ARBITRAGES INTERNATIONAUX, Vol. 1, pp. 564-566.

expulsion, or to have their cases reviewed by any competent authority. General Amin, as has been pointed out, attempted to justify the expulsions on economic grounds,¹⁰⁷ but the relevance of these grounds in all cases, and whether such grounds are sufficient to justify mass expulsions, may be doubted. The Asians had been mostly resident for a long time, and perhaps compelling reasons were required for their expulsion.¹⁰⁸ The expulsions were *prima facie* discriminatory, and in breach of the Charter of the United Nations concerning racial discrimination.

Although certain professional persons, and other categories of persons were exempted from the operation of the expelling decrees,¹⁰⁹ they were applicable to the large majority of persons of certain racial origins irrespective of their character or conduct. The expulsions may also have been in breach of the Universal Declaration of Human Rights. The Asians were required to leave without being granted an adequate time limit¹¹⁰ and on occasions seem to have been subjected to brutal treatment. The expulsion of the stateless Asians appears to have been in breach of the United Nations Convention Relating to the Status of Stateless Persons.

*The Expellee's Right to Make Representations,
and to Have Their Cases Reviewed*

In the *Chevreau*¹¹¹ case, which concerned the deportation of a Frenchman by the British authorities from an area in Persia occupied by them in the belief that he was a spy, the sole arbitrator, Beichmann, stated that: "In cases of arrests, suspicions must be verified by a serious enquiry, in which the arrested person is given opportunity to defend himself against the suspicions directed against him."

Similar principles are thought to apply to deportations, even though

¹⁰⁷See the Uganda Argus, August 5th and 7th, 1972, page 1, columns 4-5; August 9th, 1972, page 1, columns 2-4; August 10th, 1972, page 1, columns 2-4; August 12th, 1972, page 1, columns 7-8; August 14th, 1972, page 8, columns 3-6; August 16th, page 1, columns 1-4 and page 4, columns 3-8; August 18th, page 4, columns 3-8; August 30th, page 2, columns 1-8. General Amin generally appears to have attempted to justify the expulsion of the Asians because of their economic misconduct: in the statements reported on August 12th, he seems to have justified the expulsion of the Asians on the ground of their economic power.

¹⁰⁸It has been suggested, however, by some modern publicists that states are no longer bound to give reasons for the expulsion of aliens, and that the question as to whether adequate reasons exist for expulsion is not subject to the determination of an international tribunal according to general international law. For this view see, for example, AKEHURST, *A MODERN INTRODUCTION TO INTERNATIONAL LAW*, 2nd ed. at page 560. Schwarzenberger appears uncertain as to whether the principles of international law regarding the expulsion of aliens which were stated in a number of pre-1914 arbitrations are still valid: see *International Law and Order*, pub. Stevens 1971, at pages 90 and 275. The discussion of the cases concerning expulsion in Cheng's *General Principles of Law Recognised by Civilised Nations*, at page 34, is especially interesting and helpful.

¹⁰⁹See Uganda Statutory Instruments, 1972, No. 124.

¹¹⁰For the necessity of granting expellees an adequate time limit, see *Hollander's case*, U.S. v. Guatemala, MOORE'S DIGEST, Volume IV page 102.

¹¹¹II U.N.R.I.A.A., page 1113.

deporting states may not be signatories of the United Nations Covenant on Civil and Political Rights.¹¹² Article 13 of this covenant provides that aliens shall be allowed to submit reasons against their expulsion, and have their cases reviewed by, and be represented before, the competent authority for this purpose, unless compelling reasons of national security otherwise require.

International customary law may possibly now contain principles similar to that of article 13. The law of many countries provides for representations to be made against deportation orders, and for their review by courts and tribunals.¹¹³ The making of a deportation order without granting such safeguards may be contrary to international law except in cases of urgency.

There appears to have been no opportunity given to the victims of General Amin's mass expulsion to make representations concerning them, either before or after the making of the relevant decrees, and it does not appear that they had any legal means of securing the review of the expulsion orders by the courts or otherwise.¹¹⁴ The Ugandan Immigration Act 1969, section 14 does not provide "prohibited immigrants" subject to deportation with any such remedies, although it seems, there would be nothing to stop an immigrant subject to deportation from asking the Minister to review his decision.

The only representations that were made by the Asian community concerning the changes made by General Amin against them were at the conference mentioned in 1971, when no question had arisen of the making of deportation orders. Persons exempted from the operation of the expelling decrees were not

¹¹²G.A. Resolution 2200 (XXI).

¹¹³In the United Kingdom, appeals to adjudicators and to Immigration Appeals Tribunals are allowed against decisions to make deportation orders under section 3(5) of the Immigration Act, 1971 (*ibid.*, section 15(1) and 15(7)), except where the ground of decision is that the deportation order is conducive to the public good as being in the interests of national security, or the relations between the U.K. and another country, or for any other reason of a political nature (*ibid.*, section 15(3)). Appeals to the Minister's advisers will be possible in the latter cases: see *Statement of Immigration Rules for Control after Entry*, Commonwealth Citizens, Parliamentary Paper No. 80, para 35 and *Statement of Immigration Rules for Control After Entry*, EEC and other Non-Commonwealth Nationals, Parliamentary Paper No. 82, para. 42. Both papers were printed on January 25th, 1973. In the U.S., section 242(b) of the Immigration and Nationality Act, 1952, provides for a special procedure of inquiry before a deportation order is made. In Germany, aliens may make representations when the question of making a deportation order is being considered, and such order may be challenged on formal grounds in the administrative courts. The latter is implicit in the *Ausländergesetz* of 1965, article 21. In France, aliens admitted to residence, except in cases of extreme urgency, are entitled to a hearing before an advisory board, whose decision is not binding on the Minister, before a deportation order is made: see the Decree of March 18th, 1946, article 24 and 25, D. 1946, 148. Belgian law is similar: see article 5 and 10 of the law of March 28th, 1952. In Latin America, judicial or administrative remedies are generally available against decisions to expel. In Kenya, the Immigration Act of 1968, Cap. 172, does not provide that persons subject to deportation may make representations, or enjoy a right of appeal against the decision to make a deportation order. The position seems to be the same in some other African States, such as Tanzania.

¹¹⁴If the human rights provisions of the Ugandan Constitution of 1967 may be regarded as still in being, perhaps the expellees could have asked the High Court for redress on the ground of being deprived of their security of persons, and being subjected to inhuman and degrading punishments: see articles 8(2), 12 and 22 of the 1967 Constitution. For political reasons, it would have been hard for the High Court to deal with the issue.

so exempted as a result of their representations, or of the decision of a court or tribunal, but as a result of the exercise of a ministerial discretion on economic grounds. The expelling decrees provide no means of redress for persons affected by them.

It might be argued that no such principle of international customary law, as the one contended for exists, or if it does, there were special circumstances, given the number of persons involved, and the possible urgency of the matter, rendering it inoperative in the present case.

The Adequacy of the Possible Reasons for the Expulsions

Even if these doubtful contentions be accepted it remains that General Amin apparently had no adequate grounds for expelling the non-citizen Asian community. The expulsion may thus be unlawful abuse of Uganda's rights even if no account be taken of their discriminatory nature.¹¹⁵

It appears that the British government never formally asked General Amin the reasons for his expulsion of the Asians, nor did it formally protest the expulsion itself, but contented itself with endeavouring to obtain an extension of time for the departing Asians. It also tried to ensure that they could take certain of their property with them. The absence of such of a British protest does not mean that Britain has conceded that Uganda has an unlimited right of expulsion.

It may have been thought that a formal protest would exacerbate matters, and lead to further expulsions, or to increased hardships for those already the subject of deportation orders. Britain, and other states, have demanded reasons for collective expulsions in the past, and have protested about them.¹¹⁶ Expulsions have often been the subject of international arbitrations. Although the large majority of international arbitral awards relating to expulsions have concerned the expulsion of individuals, the principles enunciated in them are perhaps applicable a fortiori to the case of collective expulsions.

As already stated, the authority of certain of the older awards has been questioned,¹¹⁷ but it is thought that the legal principles stated in them can still

¹¹⁵It may also be that the expellees could be considered Uganda's effective nationals in accordance with the principle in the *Nottebohm* case (*Liechtenstein v. Guatemala*), I.C.J. Reports 1955, at page 4.

¹¹⁶Thus in 1923, Bulgaria protested to the Council of the League concerning the expulsions of Bulgarians from Western Thrace: See JOURNAL OF THE LEAGUE OF NATIONS, 1923, pages 562-3, 578. France argued before the General Assembly in 1956 that the collective expulsion of French citizens from Egypt was contrary to the Charter and the Universal Declaration of Human Rights: see G.A.O.R., 11th session, Plenary Meetings, pp. 784-5, for M. Giscard d'Estaing's statement. The alleged collective expulsion of twelve British nationals from Kenya in 1967 led to a demand from the British High Commissioner, to know the reasons, and a request for extension of time: see B.P.I.L. 1967, pp. 112-14.

¹¹⁷See especially Prof. Cheng's discussion of *Boffolo's* case, X.U.N.R.I.A.A. 528, in his work *General Principles of Law Recognised by Civilised Nations*, pub. Stevens, at page 35, Fn. 6. Prof. Cheng argues that *Boffolo's* case is only authority for the proposition that expulsion may be an

be upheld. It appears that, when an international tribunal is presented with serious reasons for the expulsion of an alien, it will normally treat them as conclusive.¹¹⁸ A considerable margin of appreciation must be granted to a state in matters appertaining to its sovereignty.

However, where an unusual or unexpected use is made of the power of expulsion, as has the collective and apparently discriminatory expulsion of thousands of established aliens which use is detrimental to the interests of the expellees and their receiving states, it is thought that the principle stated in *Boffolo's* case that an international tribunal may consider whether the reasons advanced for an expulsion are adequate is still applicable. Under the circumstances of the present case, the expulsions may have been an abuse of Uganda's rights. It is possible that the prohibition of the abuse of rights is a general principle of law recognized by civilised nations:¹¹⁹ the principle has sometimes been applied by the International Court of Justice.¹²⁰

If the principles applied in the pre-1914 cases concerning expulsions are no longer applicable, then it appears that the human rights provisions of the United Nations Charter,¹²¹ possibly the Universal Declaration of Human Rights, which according to some has attained the force of international

international wrong, if not reasons for it are given. It was not necessary to the decision of the umpire, Ralston, to state that an international tribunal may look at the adequacy of the reasons given for an expulsion. International tribunals, have, however, done so in the *Chase* case, MOORE'S INTERNATIONAL ARBITRATIONS, Volume IV page 3336, and in the *Zerman* case, Loc. at., at page 3348.

¹¹⁸See the *Hochbaum* case, A.D. (1933-34) Case No. 134.

¹¹⁹English and Italian law give little scope to the concept of the abuse of rights. Although article 226 of the BGB prohibits the abuse of rights, the German courts have interpreted their article narrowly. Gutteridge doubted whether the prohibition of the abuse of rights was a general principle of law: see 38 Transactions of the Grotius Society, 1952, pages 125 *et seq.*

¹²⁰See SCHWARZENBERGER, INTERNATIONAL LAW AND ORDER, pages 106-9 for discussion of the relevant cases, and also *Anglo-Norwegian Fisheries* case, 1951, I.C.J. Reports at page 141-2.

¹²¹It has frequently been argued that the human rights provisions of the Charter are limited by the domestic jurisdiction provisions of article 2(1) thereof, and that article 56 of the Charter only imposes an obligation on states to take separate action to promote the co-operation to be brought about by the organisation. It is thought that, as human rights are the subject matter of a treaty, the United Nations Charter, serious breaches of such rights cannot be within the domestic jurisdiction. The practice of the General Assembly does not conduce to an extreme form of the first proposition. See ROSALYN HIGGINS, THE DEVELOPMENT OF INTERNATIONAL LAW BY THE POLITICAL ORGANS OF THE UNITED NATIONS, at page 118 *et seq.*; LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS, Chapter 10: Markovic in *Nobel Symposium on the International Protection of Human Rights* at page 47, and T.E.S. Fawcett, *Human Rights and Domestic Jurisdiction*, in the INTERNATIONAL PROTECTION OF HUMAN RIGHTS, ed. Luard at page 286 for discussions of the question of domestic jurisdiction. The second proposition was put forward by Kelsen, LAW OF THE U.N. at page 100. Briefly and Scelle advanced the view in the International Law Commission, that the Charter imposes an obligation on members not to enforce racially discriminatory law: see U.N. Document No. A/CN.4/SR.14 at pp. 9-13. (1949). Judge Tanaka expressed the view in his Dissenting opinion in the *South West Africa* cases of 1966, that the Charter imposes obligations on members in the field of human rights: see I.C.J. Reports 1966, at page 289. The International Court expressed the same view in its *Advisory Opinion on the Presence of South Africa in Namibia*, I.C.J. Reports 1971, at para. 131. It seems fairly clear from the provisions of the Charter that states are placed under obligations in the field of human rights.

customary law,¹²² and the norm of international law which seems to have crystallised recently, prohibiting racial discrimination,¹²³ all have the effect of making discriminatory expulsions contrary to international law.

This norm is based on articles 55 and 56 of the United Nations Charter, the many resolutions of the General Assembly condemning apartheid,¹²⁴ the International Covenants on Human Rights,¹²⁵ the regional instruments relating thereto, the Convention on the Elimination of All Forms of Racial Discrimination,¹²⁶ and also on the provisions of many national constitutions. Such constitutions often prohibit discrimination against aliens:¹²⁷ laws prohibiting certain forms of racial discrimination and applicable to such discrimination against aliens, are in force in the United States, Canada and the United Kingdom.¹²⁸

¹²²See the opinion of Waldock to this effect in the supplement to the I.C.L.Q. for 1965, at page 15. The view expressed by Wengler in his *Volkerrecht* page 1026, that some of its most important provisions have become accepted as international customary law, appears reasonable. For an instructive recent analysis of the effect of the Universal Declaration, see Bleicher, *The Legal Significance of the Recitation of General Assembly Resolutions*, A.J.I.C. 1969, page 444, at pages 461-5. The declaration has sometimes been regarded as an authoritative interpretation of the human rights resolution of the Charter. Whatever the legal effect of the declaration may be, it has great moral force, and has greatly assisted in the crystallization of the customary norm forbidding racial discrimination.

¹²³For the view that international customary law prohibits racial discrimination see the Dissenting Opinions of Judge Tanaka in the *South West Africa* Cases, 1966 I.C.J. Reports, 286 *et seq.*, and of Judge Padella Nervo, at pages 464-8 in the same case. See also JENKS, *HUMAN RIGHTS AND INTERNATIONAL LABOUR STANDARDS*, 1960, at page 87.

¹²⁴See, for example, Resolutions 616B (VII), 1248 (XIII), 1375 (XIV), 1598 (XV), 1663 (XVII), 2446 (XXIII), 2646 (XXV) and 2647 (XXV). One may observe an increasing tendency for General Assembly resolutions condemning racial discrimination to be earned by a unanimous or nearly unanimous vote. Although it is not thought that resolutions of the General Assembly can themselves create customary law, it may be that, given such an overwhelming *opinio juris*, as is manifested by these resolutions, little state practice is required for the formation of an international customary norm of non-discrimination. Although Uganda has voted for certain of these resolutions, it is doubtful whether such a vote effects an estoppel.

¹²⁵The Covenant on Civil and Political Rights, like the European Convention on Human Rights, article 1, "Applicable to Racial Discrimination against Aliens," see article 2(1) thereof.

¹²⁶This convention does not permit discrimination against aliens on the ground of race: although distinctions, exclusions, restrictions or preferences may be made by a state party to the convention between citizens and non-citizens, they may not be made on the ground of race: article 1(1) and article 1(2) of the convention. The convention is notable for the number of parties to it, which do not include Uganda, and for its sophisticated definition of the term discrimination.

¹²⁷Thus article 14 of the Indian Constitution states that the state shall not deny to any person equality before the law, or equal protection within the territory of India. It has been held to forbid differential treatment of French and Portuguese citizens in obtaining liquor licences: *Menzies v. State of Madras*, 1952 2 M.L.J. 237. The Canadian Bill of Rights, 1960, section 1(1)(b) also forbids racial discrimination; the German Constitution, article 3, states that all persons shall be equal before the law, and that no person shall be prejudiced or favoured because of his sex, parentage, race, language, homeland and origin, faith or religious or political opinions. This article applies to aliens and nationals.

¹²⁸For accounts of these laws, see J. Jowell, *The Administrative Enforcement of Laws Against Discrimination*, PUBLIC LAW 1965, at page 119, which describes the position in the United States and Canada, and LESTER AND BINDMAN, *RACE AND LAW*, pub. 1972. See also WHITEMAN'S DIGEST, Volume 8, page 378, and BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW*, 2nd ed. at page 580.

States rarely engage in the collective and discriminatory expulsion of aliens, and when they do, protests often occur.¹²⁹ This fact, added to the general state of *opinio juris* and state practice in the area of racial discrimination, suggests that such expulsions are contrary to customary law if effected on a racial basis.

The suggestion that discriminatory collective expulsions are contrary to the United Nations Charter and the Universal Declaration of Human Rights has already been put forward by Egypt and France in the General Assembly.¹³⁰ The Universal Declaration of Human Rights has been thought by many publicists to be relevant to the question of collective expulsions; thus Max Huber, George Scelle and Belladore Pallieri all regarded transfers of population as contrary to certain of the provisions of the Declaration.¹³¹ It is thought that, where discriminatory expulsions have some objective basis, and are not a disproportionate measure in the given circumstances, they are not contrary to the Declaration. This follows from article 29(2) of the Universal Declaration.¹³²

The expulsions from Uganda appear to be contrary to the norm of international customary law prohibiting racial discrimination, which has evolved from the sources already mentioned, which include the Declaration. Insofar as the expulsions are contrary to the Charter, the Universal Declaration, and to this newly emergent rule of international customary law, it would apparently be necessary in order to validate them for Uganda, to show that the distinction made between the aliens who were allowed to remain and those expelled, which had an objective justification,¹³³ and the means employed, namely, the expulsion was proportional to the justification for the differentiation.¹³⁴

¹²⁹Such protests sometimes took place before the United Nations was founded. Thus the U.S. protested to Spain about proposed discriminatory collective expulsion of American Negroes from Cuba during the nineteenth century: see MOORE'S DIGEST, Volume 4, page 104.

¹³⁰Fawzi Bey, the Egyptian delegate, speaking in the first Committee of the General Assembly in 1948, stated that the expulsion of Arabs from Palestine was contrary to both article 3 and article 6 of the Universal Declaration: G.A.O.R., 3rd Session, First Committee, 22nd Meeting, page 868. M. Giscard D'Estaing cited both the Universal Declaration, article 3 and article 7, and the human rights provisions of the United Nations Charter in his statement to the General Assembly in 1956 concerning the collective and apparently discriminatory expulsion of 3,672 French nationals from Egypt in 1956. See G.A.O.R., 11th Session, 624th Plenary Meeting, at pages 124-5. In the debate in the General Assembly, both the Sudanese and Egyptian delegates stated that the expulsions were within the domestic jurisdiction of Egypt.

¹³¹See *Annuaire de L'Institut de Droit International*, 1952, at pages 165, 180 and 198.

It is noteworthy that on March 21st, 1973, Lord Balniel, Member of State for Foreign and Commonwealth Relations, stated that the Ugandan expulsions were contrary to the Universal Declaration as well as to general international law; see Parl. Deb. House of Commons, Weekly Hansard, Issue No. 928, March 16th-23rd, cols. 626-9.

¹³²This article finds many parallels in national constitutions and in the European Convention of Human Rights. It provides:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law, solely for the purpose of securing due recognition and respect for the rights and freedoms of others, and of meeting the just requirements of morality, public order and the general welfare in democratic society.

¹³³Note the provisions of the Ugandan expelling decrees, number 17 and 30 of 1972.

¹³⁴See Judge Tanaka, I.C.J. Reports (1966) at pages 302-16 and the *Belgian Linguistics Case*, 8 I.L.M., page 825.

The burden of proving these matters would, it seems, be on Uganda.¹³⁵ In the unlikely event of Uganda agreeing to international arbitration in respect of the collective expulsions, or in the event of their legality being referred to the International Court of Justice for its decision, it seems unlikely that Uganda would succeed in establishing that there were adequate grounds for expelling the Asians, who were treated differently from other categories of aliens.

As already pointed out, the justification put forward by General Amin for expelling the Asians was mainly economic in character.¹³⁶ There seem to have been three economic reasons for his expulsion of the Asians. They were sometimes guilty of economic crimes, such as tax evasion and evasion of exchange control regulations; they also were sometimes guilty of exploitation of Africans, and occupied too prominent a position in Ugandan economy.

Although it is true that certain categories of professional persons were exempted from General Amin's decrees expelling the Asians,¹³⁷ it can scarcely be that all non-citizen Asians resident in Uganda came within the ambit of the three reasons mentioned. The objective justification for the differentiation between the non-citizen Asians and the other categories of aliens seems to have been lacking. Even if one assumes there was such a justification, the expulsion of all the non-citizen Asians, was utterly disproportionate to the economic reasons advanced for it.

It would have been possible for the Ugandan authorities instead of embarking on their programme of mass expulsions, to have prosecuted individuals who were guilty of economic crimes. Further programmes of nationalisation, or of Africanisation, extending to smaller business, would have diminished the importance of the Asians in the commercial sector. The expulsion of the Asians seems a specially indefensible action when it is remembered that many of them had been resident for generations in Uganda.¹³⁸

¹³⁵Judge Tanaka, Dissenting Opinion at page 309.

¹³⁶Note President Amin's speeches of August 4th, 7th, 12th, 13th and 29th, 1972, and that of Mr. Kebedi at the Summit conference of East and Central African governments in Dar-es-Salaam on 7th-9th September 1972. Note also the references to the Ugandan press already mentioned.

¹³⁷Decree No. 17, section 2 and Schedule 1; Decree No. 30, section 1.

¹³⁸The fact that the Uganda Immigration Act of 1969, sections 10(5) and 11(2), allow the cancellation of entry permits and certificates of residence at the absolute discretion of the Minister and without assigning any reason, cannot justify the expulsions, which, from the viewpoint of international law, were racially discriminatory.

It has been suggested by Dr. R. Plender that international customary law may protect a vested right to residence; see his *International Immigration Law* at pp. 94-98. He cites no cases to support his contention, and he admits that it may be that vested rights must have fixed value before they are capable of protection. *Oscar Chinn* Case, P.C.I.J. Series A/B, No. 63 at page 88. It may be doubted whether any Asians had such a right. Certain Asians had enjoyed the status of permanent residents, as defined by sections of the Immigration (Control) Act, 1948, as also had certain other persons, but this status was lost as a result of the Immigration Act, 1963, 1963, section 7(1)B, and the Asians in question had to apply for entry permits and certificates of residence.

It appears that when state succession occurs, the new sovereign may apply its laws to divest individuals of rights acquired against the old sovereign: *Chicago Railway Co. v. McGlinn*, 114 U.S.

Economic grounds have rarely been advanced for a mass expulsion of aliens.¹³⁹ The economic necessity for the expulsion can be questioned on the further ground that most of the Asians would have gradually left Uganda of their own volition, before their entry permits and certificates of residence were expected to expire in 1977.

When General Amin gave his ultimatum to the British government, on August 5th, 1972, to arrange for the evacuation of its Asian citizens, he stated that the Asians had been guilty of sabotaging the Ugandan economy, and were after all, Britain's responsibility. Mr. Kebedi, the Ugandan Foreign Minister, repeated the same remarks in his interview with the British press on the same day.¹⁴⁰ One of the reasons which apparently motivated General Amin to expel the Asians, was the fear that owing to the operation of the British immigration legislation, and of the voucher system, the departure of the Ugandan Asians would be unduly delayed. Although certain of the Asians were ultimately Britain's responsibility, this in itself could not justify their discriminatory expulsion. Given the British allocation of special vouchers to its Asian citizens in Uganda, the whole British Asian community might have been expected to have left in ten years' time.¹⁴¹

General Amin did not state that the expulsions were a reprisal for Britain's refusal to grant a larger number of special vouchers to her Ugandan citizens and nationals.¹⁴² Reprisals which may be contrary to international *jus cogens*¹⁴³ can hardly be in conformity with international law.¹⁴⁴

542 (1885); see also Kaeckenbeeck, *The Protection of Vested Rights in International Law*, B.Y.I.L. 1936, page 1, at page 17. The national states of the Asians have not sought compensation in respect of the loss of the vested rights as from October 1st, 1965, and perhaps they have now acquiesced in their expropriation without compensation on the assumption that the rights can be internationally protected.

It has also been suggested by Dr. Plender that international law may protect a vested right to trade, and hence indirectly, a vested right of residence: see his article, *The Exodus of Asians from East and Central Africa*, A.J.C.L. 1971, page 287, at pages 309-312. Whether or not international law can protect such vested rights, it seems clear that none of the Ugandan Asians had an irrevocable right to trade either by the Trading Act of 1939, or by the Trade Licensing Act of 1969. According to each Act, licences were granted on an annual basis, but would be renewed: Trading Act 1939, section 8(4); Trade Licensing Act, 1969, section 12.

¹³⁹National legislation does not generally provide that aliens can be expelled for economic reasons, unless they have committed crimes. In 1892, the Institute of International Law attempted an exhaustive definition of the reasons for individual expulsions: economic reasons were not included, as is hardly surprising under the different economic conditions prevailing at that time. See *Annuaire de L'Institut de Droit International*, 1892-4 at pages 223 *et seq.*

¹⁴⁰Justin O'Brien, *op. cit.*, *supra*, at page 9.

¹⁴¹*Ibid.*, at pages 8-10.

¹⁴²He did, however, state that he had been inspired by God, and intended to teach Britain a lesson when he made his original announcement concerning the expulsions: see Keesing's *Contemporary Archives*, September 6th-13th, 1972, column 25469.

¹⁴³See the dissenting opinion of Judge Tanaka in the *South West Africa Cases*, I.C.J. Reports, 1966 at para 298, which states that human rights, being derived from natural law, are part of the *jus cogens*.

¹⁴⁴In the nineteenth century, collective expulsions were sometimes stated to be justifiable as a reprisal. Rolin Jacquelmyns, the distinguished Belgian jurist stated that the collective expulsion of

It is doubtful whether any other reasons which General Amin could advance for the expulsions would be regarded as adequate by an international tribunal, or sufficient to rebut the presumption that racial discrimination, as opposed to permissible discrimination, has occurred, when a whole community of a given race has been expelled. Clearly it could not be argued that all the members of the community had been involved in political conspiracy.¹⁴⁵

It seems that the expulsion of the Ugandan Asians was an act of racial discrimination, as such contrary to international law, and that no adequate reasons have been, or can be advanced, which would enable it to be treated as a permissible differentiation.

Other Possible Grounds of Illegality

According to the *Hollander Case*,¹⁴⁶ which was decided during the early part of this century, an alien should not be expelled without being given the opportunity to make arrangements for his family and business. The departing Asians were not enabled to make satisfactory arrangements for the disposition of their property, as the agents appointed by those who departed after October 4, 1972 had little power of independent action,¹⁴⁷ whilst those who departed before October 4th, and who sold their properties, found that the sales were retrospectively invalidated, and certain of the properties vested immediately in the Abandoned Property Custodian Board.¹⁴⁸

It may be contended however, that if the latter category of persons had stayed longer they could have made more lasting provisions for their property by

aliens in peacetime is only permissible by way of a reprisal: see his article *Droit d'Expulsion des Etrangers*, *REVUE DE DROIT INTERNATIONAL* 1888, at page 498. Indonesia justified her expulsion of Dutch nationals in 1957 on the grounds of Holland's failure to negotiate over West Irian. Dahm, rightly, it is submitted, considers this justification as having no foundation in international law: *Volkerrecht*, Volume 1 at page 529.

Even if modern international law were presumed to permit a category of reprisal which may be contrary to international *jus cogens*, the conditions for the exercise of the reprisal as defined in the *Nautilaa Case*, 2 U.N.R.I.A.A., page 1013, were not present. The dispute between Britain and Uganda as to the annual quota of Asians who should be admitted to this country was never referred to the Security Council for settlement, as the parties were required to do by article 37(1) of the Charter. Britain's refusal to accept more than a certain quota of Ugandan Asians for settlement was not a breach of a duty owed to Uganda. Even if it be assumed that it was a breach of a duty owed to the Asians, by which Uganda was specially damnified, it cannot be that the reprisals were in conformity with international customary law, as they lacked all proportionality, and also were directed against Indian, Pakistani, Bangladeshi, Zambian, Kenyan and Tanzanian subjects, as well as against stateless persons.

¹⁴⁵MOORE'S DIGEST OF INTERNATIONAL LAW, Volume IV, pages 107-8.

¹⁴⁶Note Decree No. 29 of 1972, section 1 (4)-1(6).

¹⁴⁷Decree No. 27, sections 9 and 4(5). It does not seem that international customary law prohibits all retroactive legislation, although where such legislation invalidates transactions already undertaken, it may be specially objectionable. International customary law may prohibit retroactive criminal legislation, but even this is not entirely certain. See Wengler, *Volkerrecht*, Volume 1, page 27, fn 2, and page 545, fn. 2. See also the European Convention of Human Rights, article 7.

¹⁴⁸Some of them continued to get their money out of the country through Kenya.

appointing agents.¹⁴⁹ There also appears to be no rule of international customary law stating that the property of expellees may not be expropriated, or that dispositions of property undertaken by them may not be retrospectively invalidated. The legality of the expropriations of the Asian property is discussed in the next section of this paper.

If the Asians were submitted to brutal or humiliating treatment before their departure, this could be made the subject of a claim before an international tribunal. As already pointed out, however, the Ugandan authorities, with certain exceptions, appear to have behaved in a restrained way. The relevant cases are the *Maal Case*,¹⁵⁰ and *Ben Tillett's Case*.¹⁵¹ In the former case, the state of a national who was stripped naked and subjected to the ridicule of a mob recovered damages in respect of this inhuman treatment.

The Jurisdiction of the International Court in Relation to the Expulsions

Although Uganda appears to have acted in breach of her international obligations in expelling the Asians, it seems doubtful whether the question of the legality of the expulsions will be referred to the International Court of Justice. India and Uganda reserve inter-commonwealth disputes from the jurisdiction of the International Court of Justice, and the parties are unlikely to refer the question of the expulsion to the International Court by special agreement. It is possible that if the question of the Ugandan expulsions or expropriations was referred to the International Court by special agreement, Uganda might contend that Britain had no genuine and effective link with the expelled Asians, and so could not protect them.

If genuine and effective links had existed in the past, Uganda might argue that such links had become disrupted by Ugandan independence, and were not opposable to her, as the most effective link that the Asians had was with Uganda. It is doubtful whether Uganda would make such a submission, as it might be regarded as equivalent to a conclusion that she had expelled persons who were by international law her own nationals, if the principle in the *Nottebohm* case¹⁵² is capable of being extended somewhat.

Several rejoinders would be possible to such a Ugandan contention. It might be argued that it is doubtful whether the *Nottebohm* case is rightly decided,

¹⁴⁹It was suggested in an article in *The Times* by Louis Heren on August 30th, 1972, that General Amin may have suspected that there was an Asian plot against him: see page 13, columns 1 and 2 for this article.

¹⁵⁰RALSTON, *VENEZUELAN ARBITRATIONS OF 1903*, page 914.

¹⁵¹Cmnd. 9235 (1899).

¹⁵²I.C.J. Reports, 1955, at page 4. It has often been suggested that aliens who have close links with a given country should be immune from expulsion. See the United Nations Study of Expulsion of Immigrants, ST/SOA/22, at paragraph 37.

exchanging as it does, the certainties of nationality for the uncertainties of other less-well-defined criteria. The requirement of a genuine and effective link was not adopted by the Italo-United States Claims Commission in the *Flegenheimer* case.¹⁵³

Even if the *Nottebohm* case be considered as rightly decided, its principles may only be applicable to the acquisition of nationality by naturalisation, and not to the maintenance of bonds based usually upon birth in a former British protectorate. It is also thought that an international tribunal would be disposed to presume that a genuine and effective link existed, as the Ugandan Asians who retained their British protected status or citizenship of the United Kingdom and colonies, were permitted to do so to prevent them from becoming stateless persons as a result of their failure to register as Ugandan citizens.

It might also be maintained that Ugandan Asians who failed to register as Ugandan citizens, showed their desire to maintain links with the United Kingdom. Many of them intended to go there if they could, and many had business, financial or family connections with this country; some went there for educational and other purposes.

Although there is some controversy as to the exact scope of the principle of estoppel or preclusion in public international law, it is noteworthy that General Amin repeatedly stated that the Asians had not sufficiently integrated themselves into Uganda, and that many of them had maintained connections with Britain. Further, when General Amin first announced his decision to expel the Asians, he described them as Britain's responsibility, by which he must have meant that those of British citizenship or nationality were the responsibility of this country. It may be, however, that the latter statement would be construed merely to mean that Britain was bound to allow their admission. It does not seem that Uganda has contested Britain's right to make representations on behalf of the expelled Asians.

It is not thought that the principle of the *Nottebohm* case is applicable to the Ugandan expulsions. If it is, then it may not be to the expropriations of the property of the departed Asians who left for the United Kingdom, since these occurred after the Asians had established a genuine link with the U.K. by returning to it. The Ugandan authorities have not contested the right of the British High Commission in Kampala to enter into preliminary negotiations regarding compensation.

Many of the Asians of Indian, Pakistani and other expellee nationalities maintained links with their country of origin, and link of birth or descent must be sufficient to establish an effective connection. It is interesting to note that the Pakistani acceptance of the compulsory jurisdiction contains no reservation of inter-commonwealth disputes and that she left the Commonwealth in January

¹⁵³I.L.R., 25, Volume 1 of 1958 at page 91.

1972.¹⁵⁴ As Pakistan has herself sometimes been accused of collective expulsions of Hindus and Christians, it seems unlikely that she would refer the question of the Ugandan expulsions to the International Court of Justice.¹⁵⁵

It has been suggested in this paper that the expulsions from Uganda were a clear infringement of the human rights provisions of the United Nations Charter, which, it is thought, prevail over the clause of domestic jurisdiction, and impose obligations on states. The expulsions were also, as it is thought, an infringement of the Universal Declaration of Human Rights, and of the customary norm of international law, prohibiting racial discrimination, which derives partly from the Universal Declaration, and partly from other sources.

It seems that states which are members of the United Nations and also parties to the optional clauses, and which have not made reservations thereto of which Uganda could take advantage,¹⁵⁶ may obtain a declaration from the International Court to the effect that Uganda has broken her obligations under the Charter in expelling the Asians.¹⁵⁷ States parties to the statute which are parties to the optional clause, might likewise obtain a declaration from the International Court, that Uganda has broken her obligations under International customary law. Both the expulsion of aliens of a given nationality and of stateless aliens, can be considered as infringements of the legal norms mentioned.

It may be that, under the suggested circumstances, it would be possible to suggest that no real dispute existed. Judges Morelli and Fitzmaurice have both been responsible for useful analysis of the meaning of the term "dispute."¹⁵⁸ Both judges require that one of the states must have made a claim or protest before a dispute can be said to exist. According to Judge Fitzmaurice, a legal dispute only exists if its outcome in the form of a decision of the International Court can effect the legal interests or relation of the parties in the sense of imposing on one of them a legal right, or obligation, or operating as an injunction or prohibition for the future or as a ruling material to a still subsisting legal situation.

A judgment that Uganda has violated her legal obligations, and must not engage in discriminatory collective expulsions in the future, may be considered to come within the ambit of the last two categories required by Judge

¹⁵⁴See Keesing's *Contemporary Archives*, Feb. 19-26th, 1972, at page 25114.

¹⁵⁵Bangladesh has not yet become a party to the Optional Clause: Zambia and Tanzania are also not parties; Kenya is a party, but reserves inter-Commonwealth disputes from the jurisdiction of the court.

¹⁵⁶*Electricity Company of Sofia and Bulgaria Case* 1939, Series A/B, No. 77, page 80-82.

¹⁵⁷It may be noted that the breaches of the Charter were specially serious.

¹⁵⁸See the Dissenting Opinion of Judge Morelli in the *South West Africa Case*, (Preliminary Objection), 1962, I.C.J. Reports at pages 566-68, and the Separate Opinion of Judge Fitzmaurice in the *Case Concerning the Northern Cameroons*, (Preliminary Objection), I.C.J. Reports, 1963 at pages 108-111.

Fitzmaurice. It may, however, be contended that only the national states of the expelled aliens have a legal interest in the expulsions, and that a mere humanitarian interest is insufficient. On the other hand, it may be that all states have an interest in the fulfillment of the obligations which the Charter of the United Nations and international customary law impose on states in the field of human rights.¹⁵⁹

Given the political will, it would be possible for the General Assembly or the Security Council to refer the question of the compatibility of collective expulsions with the obligations of the United Nations Charter, the Universal Declaration of Human Rights, and international customary law, to the International Court for its advisory opinion.

Unfortunately, neither of the courses of action suggested is likely to occur. The use of the International Court has been declining in recent years. States may be unwilling to obtain a definition of international obligations which might be politically embarrassing, and they have generally only referred disputes to the court in which they are directly concerned. There is little likelihood of either of the political organs seeking an advisory opinion on the matters in question.

The state of Uganda is placed under special obligations to stateless aliens in virtue of the Convention Relating to the Status of Stateless Persons, to which she is a party. It appears that she may have broken these obligations, under this convention. Article 31 of the convention provides:

Contracting states shall not expel such a stateless person lawfully in their territory, save on grounds of national security or public order.

For the reasons already stated, it is not thought that the Ugandan authorities could justify the expulsions on either of these grounds. The Asians threatened neither the national security nor the public order of Uganda, whatever margin of appreciation be granted to that country.

Article 32 of the convention provides:

The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the stateless person shall be allowed to submit evidence to clear them and to appeal to and be represented for the purpose before the competent authority, or a person or persons designated by the competent authority.

The contracting states shall allow such a stateless person a reasonable period within which to seek legal admission into another country.

¹⁵⁹Note the contrary opinion of the majority of the International Court of Justice in the *South West Africa* Cases of 1966, I.J.C. Reports, 1966, at pages 31-33. It is thought that the dissenting opinion of Judge Jessup is to be preferred. See especially pp. 385-9 of this opinion. Reference may also be made to the opinions of Judge Wellington Koo at pages 25-9; of Judge Koretsky at page 242-8; of Judge Tanaka at pages 251-4; of Judge Padilla Nervo at pages 461-67; of Judge Forster at pages 418-82; and of Judge Mbanefo at pages 501-5.

The International Court in its judgment in the *Barcelona Traction* Case at para 34 stated that all states have an interest in the observance of certain fundamental human rights.

It seems equally clear that Uganda has not fulfilled the international obligations contained in article 32 of the convention. She also appears to have broken those contained in article 3, according to which parties to the convention undertake to apply its terms without discrimination on the grounds of race. Disputes as to the interpretation and application of the convention are submitted to the jurisdiction of the International Court, according to the provisions of article 34 of the convention. As this is a convention having broad humanitarian objectives it is thought that any state party to the convention could refer the question of Uganda's fulfillment thereof to the International Court. The question of such fulfillment would, of course, be decided in accordance with international law.

The expulsion of the Ugandan Asians has not resulted in any international litigation. This has been unfortunate as the area of the collective expulsion of aliens is a somewhat obscure one, and it would have been interesting and valuable to have had the benefit of a decision of an international tribunal, stating what are the principles of law applicable thereto.

International Law and the Expropriation of the Asian Property

The Nature and Extent of the Takings, and the Legal Limitations Thereon

The taking of the Asian property which was "abandoned" by its owners to the Ugandan authorities, in accordance with Decree Nos. 27 and 29 of 1972, as amended by Decree No. 5 of 1973, may be considered as a large-scale expropriation. The property was not nationalised; its possession was often transferred to private persons, and there was no intention that it should be subjected to the long run use and exploitation of the state. Much of the property has found its way into private hands, including, it seems, those of certain of the staff of Makerere University, who have benefited by obtaining Asian motor-cars.¹⁶⁰ The Foreign Office have treated the taking of the Asian property as a large scale expropriation, and they appear to be correct in their characterisation.¹⁶¹

It may be that the property and the control of agents with limited powers can be considered as effectively expropriated, given the limited powers of the agents according to section 1(4) and 1(6) of Decree No. 29 of 1972, and also given their inability to transfer any of the rents and profits accruing to the property to its

¹⁶⁰The writers have been so informed by Dr. James Read, Reader in Law at the School of Oriental and African Studies, London.

¹⁶¹See the statement of Sir Alec Douglas-Home, Secretary of State for Foreign and Commonwealth Relations, to the effect that the expropriations, so far as they have occurred, are discriminatory. Parliamentary Debates, House of Commons, Weekly Hansard, December 15th-22nd, 1972, at columns 1126-7.

owners.¹⁶² When the properties are sold, the sales would appear to be forced sales, and hence as expropriations for which compensation must be paid.¹⁶³

It may be doubted whether the actual blocking of accounts would be considered in itself as an expropriation of property. It was suggested by the editors of the *Netherlands International Law Review*, that the refusal on the part of Indonesia to grant permission for the transfer of funds abroad to the owners of the Dutch enterprises taken over in Indonesia in effect deprived the Dutch owners of all enjoyment of their property.¹⁶⁴ Wortley has also argued that exchange control regulation can amount to an expropriation of property.¹⁶⁵ It has, however, often been decided that the refusal to permit the transfer of funds abroad does not amount to an expropriation.¹⁶⁶ When, however, such measures are considered in conjunction with measures of expropriation, perhaps they may be so regarded.¹⁶⁷

Whilst it is generally agreed that states may nationalise or expropriate foreign property, they do not enjoy an absolutely free discretion in this respect. The limitations which have generally been said to apply to expropriation of foreign property, are that the property must be amenable to the jurisdiction of the expropriating state; the expropriations must fulfil some public purpose; they must not be discriminatory, and prompt, adequate and effective compensation must be paid in respect to them. The taking of foreign property must be made subject to the provisions of national constitutions or municipal laws. The effect of such legal provisions is not clear.

¹⁶²See Christie, *What Constitutes a Taking of Property*, B.Y.I.L. 1962, page 307, at pages 314-6.

The operation of the Uganda system of exchange control may be discriminatory and hence probably contrary to international law. No decrees or statutory instruments are available which detail the exact working of the exchange control regulation. Their operation is dependent on instructions given by the President of the Bank of Uganda. We are indebted to Dr. Yash Tandon of the L.S.E. and to Mr. Peggie of National Grindlay's Bank, for the information they have given us as to their working. It seems that the accounts of both citizens and non-citizen Asians are blocked, while U.K. citizens resident in Uganda are allowed to make monthly remittances outside Uganda, and to take money with them when departing. Citizens of Arab countries resident in Uganda are also entitled to withdraw money from Ugandan accounts, as also are Kenyan and Tanzanian Africans. The accounts of Kenyan and Tanzanian Asians are blocked. Where exchange control measures discriminate on the ground of race, they are contrary to international law, according to Dr. F.A. Mann, the *Legal Aspects of Money*, 3rd edition, page 500. The Ugandan authorities may argue that their exchange control measures are not discriminatory on the ground of race, but on other economic grounds. It appears that one of the reasons for the blocking of the Asian accounts may be Uganda's inability to provide convertible currency for the expelled Asians. This inability proceeds from her own wrong in expelling them, and it seems doubtful whether Uganda can adduce her own wrong in order to help to rebut the presumption which may exist that the measures are discriminatory. Note the decision of the Rumanian-Turkish Arbitral Tribunal in the *Michel Macri* Case, 7 T.A.M. page 981. The Tribunal stated that a party cannot invoke in his own defence, a fact for which he is responsible.

¹⁶³Christie, *op. cit.*, *supra*, pages 324-9.

¹⁶⁴5 *NETHERLANDS INTERNATIONAL LAW REVIEW* (1958), pages 227, 242.

¹⁶⁵See his work, *THE EXPROPRIATION OF FOREIGN PROPERTY*, at pages 108-9.

¹⁶⁶See Christie, *op. cit.*, *supra*, at page 318, fn. 4, for the relevant cases.

¹⁶⁷*French v. Banco Nacional de Cuba*, 23 N.Y. 2nd 46 (1868).

It does not seem that General Amin has purported to expropriate any property which is not amenable to the Ugandan jurisdiction. Although the requirement is a vague one, it does not seem certain that the Ugandan expropriating decrees satisfy entirely the requirement of a public purpose. They are discriminatory and possibly in breach of estoppels. The legality of the Ugandan expropriations is discussed below.

The Requirement of a Public Purpose

Certain judicial decisions in the inter-War period suggest that foreign property may only be expropriated when the expropriating state acts from motives of public utility.¹⁶⁸ The requirement of a public purpose for nationalisations and expropriations has been doubted by some in recent years.¹⁶⁹ As is pointed out by Martin Domke,¹⁷⁰ States have a considerable discretionary power in determining what are their interests, and so, if the limitation exists, it is not a difficult one to satisfy. The requirement is retained by Garcia Amador in his *Final Draft on State Responsibility*, which was prepared for the International Law Commission.¹⁷¹ The *Harvard Draft on State Responsibility for Injuries to the Economic Interests of Aliens* also retains the requirement.¹⁷²

Schwarzenberger regards the requirement as still valid.¹⁷³ Whatever value the concept may have, its retention would seem perhaps specially justified in the case of expropriations. It is interesting to note that both the Ugandan Constitution of 1962 and of 1967 required that the taking of property should be for the public benefit, and that the necessity therefor should justify the causing of any hardship which might result to any person having any interest in, or right over the property.¹⁷⁴

Although it is thought that expropriations must be for a public purpose, the vagueness of the concept makes the question as to whether an expropriation is in the public interest largely a matter for the expropriating state. However, the expropriating state must act in good faith and its determination of the public interest must not be beyond reasonable limits.

When General Amin retroactively invalidated certain sales transactions entered into by Asians,¹⁷⁵ and later vested certain properties in the Abandoned

¹⁶⁸See especially the award in the *David Goldenberg* Case between Germany and Rumania, 2 U.N.R.I.A.A., 901.

¹⁶⁹See AMERASINGHE, *STATE RESPONSIBILITY FOR INJURIES TO ALIENS*, pub. 1967, at page 137, and GILLIAN WHITE, *NATIONALISATION OF FOREIGN PROPERTY*, Chapter 7, pages 145-50.

¹⁷⁰Domke, *Foreign Nationalisations*, 54 A.J.I.L., page 588 at page 590.

¹⁷¹I.L.C. Yearbook, 1961, (ii), 47; article 9 (2).

¹⁷²Article 10; see A.J.I.L. 1961, at page 553.

¹⁷³FOREIGN INVESTMENTS AND INTERNATIONAL LAW, pub. 1969, at pages 118 and 161.

¹⁷⁴Constitution of 1962, article 22(1)(a) and (b); Constitution of 1967, article 13(1)(a) and (b). The question as to whether article 13 of the 1967 Constitution creates any estoppels is considered at a later stage.

¹⁷⁵Certain transfers and mortgages of property were retroactively made illegal by section 1 of Decree No. 27. It is not clear whether the title to property passed despite this illegality. A Ugandan

Property Custodian Board¹⁷⁶ and thereafter in the government,¹⁷⁷ he did not apparently attempt a closely reasoned justification of his actions.¹⁷⁸ However, his reasons are implicit from certain of his statements. In a statement reported, in the *Uganda Argus* on August 12th 1972,¹⁷⁹ he stated that business in the whole of Kampala, and all towns in Uganda, should be managed and controlled by Africans. In a statement reported in the same newspaper on August 28th 1972,¹⁸⁰ he said that the armed forces had a duty to put the economy of Uganda into the hands of Ugandans. Black Ugandans should be enabled to buy all shops, factories and gins.

Both the expropriations of non-citizen Asian property, and the appointments of agents having limited powers for the sale of such property, appear to have been in furtherance of the above objectives. Both operations were intended to provide for the gradual transfer of businesses and properties to Ugandan Africans, who often lacked enough capital to make purchases. When persons acted in such a way that the latter policy might be frustrated insofar as no information or documents were provided in respect of properties or businesses, it was arguably in the public interest that such properties or businesses should be vested in the Abandoned Property Custodian Board, and ultimately in the government. Similarly, where properties were abandoned by the departed Asians, it was also arguably in the public interest that such properties might be vested in the board, such that it could carry out its function of disposal.¹⁸¹

court would obviously hold that it did not. Where money was paid for such property by other non-citizen Asians or aliens, it would seem that an international claim might be brought on their behalf, and that the transferor would also have a claim in respect of his property. No international claim could be brought in respect of moneys paid by aliens where it was clear that they had obtained payment for the same, and had managed to withdraw their money from Uganda.

Certain sales were not only made retroactively illegal, but the property sold was vested in the government. This situation arose when properties were sold, but no information or documents were supplied to the minister: see section 4(5) of Decree No. 27. It is clear that although the decree was retroactive, persons who sold property before it came into effect knew of the likely consequences: see *The Times*, August 31st, 1972, page 2, cols. 1-5. They also knew of the possibility of retroactive punishment. It is doubtful whether retroactive legislation is contrary to public international law. Kelsen took the view that it was not: see Kelsen and Tucker, *Principles of International Law*, 2nd ed., at p. 46; the matter seems uncertain. If it is, then perhaps those who had their Property rights taken retroactively are theoretically entitled to *lucrum cessans*. On the question of retroactive legislation, see N. Marsh's essay *The Supra-National Concepts of the Rule of Law*, *Oxford Essays in Jurisprudence*, edited by A.G. Guest, page 223, at pages 284-51.

¹⁷⁶Decree No. 29 of 1972, section 12(1) and 12(2).

¹⁷⁷Decree No. 5 of 1973, section 1(1).

¹⁷⁸We do not find anything corresponding to the consideration which accompanied the Indonesian nationalisation measures affecting Dutch property, which stated that the measures of nationalisation took place because of Holland's refusal to negotiate on the question of Western Irian. *Whitman's Digest of International Law*, Vol. 8, page 1048.

¹⁷⁹At page 1, Cols. 7-8.

¹⁸⁰At page 1, Column 4.

¹⁸¹In early October 1972, General Amin, speaking of the abandoned properties, stated that Ugandans had every right to own all these things because they were Ugandans, and everything in the country belonged to them: see *Uganda Argus*, October 5th, 1972, page 1, cols. 5-8. Although

The Ugandan authorities may be criticised, as has already been pointed out, for not always following the procedures laid down in the decrees mentioned. It is also noteworthy that General Amin never specifically justified the vesting of houses and personal chattels that were abandoned in the Abandoned Property Custodian Board and in the government. It might be contended that there was no compelling urgency for this.¹⁸² However, Uganda might contend, if called on to justify her action, that the new entrepreneurial class which it was hoped would emerge, would require somewhere to live, and that the economic development of Uganda would be assisted by measures which would assist the emergence of a *petit bourgeoisie*.

It would, it seems, be difficult for the U.K., or any other national state of the expelled aliens, to adduce evidence that the expropriations were in bad faith. The latter cannot be presumed of a state, and it would be difficult to adduce sufficient evidence of the motives of the Ugandan authorities to show that they acted in bad faith, or were predominantly motivated by it. Although General Amin made statements such as that to the effect that taxpayers had been milked white by Asians for almost a century¹⁸³ which might indicate animosity and bias, it may be admitted that there is some element of truth in these statements, as well as of exaggeration, and there seem, as has been suggested, plausible grounds on which General Amin could have concluded that the expropriations were in the public interest.

It might be argued that the Ugandan expropriations were not in the public interest as the properties were not equally distributed to all sections of the community. Specific groups were favoured, such as Baganda businessmen and Muslim soldiers. The favoritism shown might help to establish that General Amin was not predominantly motivated by a desire to further the well-being of Uganda in taking the properties in question.

However, the distribution of properties to certain elite groups of great importance to the economic and political life of the nation does not necessarily negate the presence of such a desire. It might also be argued that, given the lack of economic expertise of certain Ugandans, the redistribution might be to the public detriment rather than benefit. On the other hand, it may be for the benefit of a country if its economy is removed from foreign domination.

General Amin's statement represents an incorrect statement of the law, it may be deduced from it that he believed that the transfer of properties belonging to the non-citizen Asians, to the Ugandans, would benefit Uganda.

¹⁸²Some international lawyers have argued that such a compelling need must exist before properties can be taken to satisfy public need. Thus the International Law Association, in its 48th Conference in 1958, stated that an expropriating state must show that a taking of property is necessitated by a dominating public purpose: see Resolution on Nationalisation, 48th Conference, New York, Sept. 1st-12th, 1958, page XV. It is not clear from the statements when, how, and in what detail the presence of such a purpose must be shown. It would seem to be sufficient if it is shown in diplomatic correspondence, or before an international tribunal.

¹⁸³See Kessing's *Contemporary Archives*, Dec. 2nd-9th, 1972, columns 25598.

Thus the Ugandan expropriations do not seem to have lacked a public purpose, although whether there was a compelling need for certain of them may be doubted.

It has already been suggested that it is possible to regard properties placed in the hands of agents with limited powers as already expropriated, given the provisions of section 1(4)-1(6) of Decree No. 27 of 1972, which drastically limit the powers of the agents and the fact that rents and profits may not be transferred outside Uganda. If they be so considered, these takings may be created as being for the benefit of Uganda, forming as they do an integral part of a programme of Africanisation.

It may be maintained, however, that there was no economic necessity to impose restrictions on disposition of all departed property-owners; such restrictions on disposition should, it might be contended, only be imposed on dispositions of properties of considerable economic importance and value. Further, it would be possible for Uganda to contend that the restrictions on disposition exist to ensure that no property transactions take place which are not in the interest of Uganda, of which she is the paramount judge. Given the elasticity of the concept of the "public interest," it would be difficult to show that certain of the Ugandan expropriations did not conform to the requirement.

The Discriminatory Nature of the Ugandan Expropriations

The Ugandan expropriations appear to have been of a clearly discriminatory character, and as such contrary to international law. No property belonging to citizens has been taken by the three relevant decrees, which were exclusively concerned with properties belonging to non-citizens. There does not appear to be any principle of international customary law which would make it possible to justify them on the grounds of their political or economic motivation.¹⁸⁴

Contemporary international law appears to have retained its traditional prohibition of discriminatory expropriation in *Banco Nacional de Cuba v. Sabbatino*, both the District Court of New York and the U.S. Court of Appeals recognised the continued viability of the principle.¹⁸⁵ Dimrock D.J., who

¹⁸⁴GILLIAN WHITE, *NATIONALISATION OF FOREIGN PROPERTY*, pub. 1961, at 144, states that when an expropriation is discriminatory, there is no authority which permits a state to rely on the political or economic motives underlying a measure in exoneration of its discriminatory effect. BROWNIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW*, 1973 ed. at page 524, fn. 3, suggests that such expropriations may be justified on the basis of economic or social grounds. Brownlie, however, cites authorities in support of his proposition which relate to situations in which only foreign nationals own the property in question. Even if Brownlie is correct, it may be doubtful whether there are compelling economic and social needs for all the expropriations carried out in Uganda.

¹⁸⁵For reports of these decisions, see U.S. District Court, S.D. New York 60, Civ. 3929, March 31st, 1961, and 56 A.J.I.L. (1962). The latter decision was reversed by the Supreme Court on another point, see 4 I.L.M. 381, for a critique of the judgment of the Supreme Court, see R. Falk, *The Complexity of Sabbatino*, A.J.I.L., 1964, at page 935.

delivered the judgment of the U.S. District Court of New York, stated that, when an expropriation is prima facie discriminatory it may be possible to justify it on the grounds of the security of the state, or the conduct of the owners of the property. The justifications in question were recognized by traditional customary international law.¹⁸⁶

Some would argue that all discriminatory expropriations are not contrary to international law. The Court of Appeals of Bremen, in the *Indonesian Tobacco*¹⁸⁷ case, in which the recognition of discriminatory acts of nationalisation of Dutch property was in question, stated that the unequal treatment of unequals was permissible, and stressed the dominant role of Dutch companies in the production and distribution of Indonesian goods.¹⁸⁸

It is doubtful whether the principle of the *Indonesian Tobacco* case is good law: it would be capable of working considerable injustice to ex-colonial powers. If it is good law, then it may be applicable to the expropriation of businesses belonging to nationals of a former colonial power who exercise a dominant role in the economy of a newly emergent state, and may permit discrimination between them and nationals, and between them and other classes of aliens.

It cannot apply to the taking of all the abandoned property of nationals of the colonial power, including personal chattels, and businesses of little economic importance. It also does not appear applicable to the expropriation of property belonging to persons of other than British nationality and of stateless persons, unless the latter be regarded as sufficiently identified with the colonial exploiters to come within the ambit of the principle.

It is doubtful whether the principle of the *Indonesian Tobacco* case is good law, and if it is, whether the Ugandan expropriating decrees may be assumed to come within its purview.

Some have argued that discriminatory expropriations do not confer a title which can be recognized by foreign courts,¹⁸⁹ and that in the case of such expropriations, specific restriction may be demanded.¹⁹⁰ Specific restriction is evidently not likely to happen in the present case, and it is doubtful whether the British government would demand it, although it made a claim for specific restriction in its Memorial in the *Anglo-Iranian Oil Company* case.¹⁹¹

As discriminatory expropriations are contrary to international law, the

¹⁸⁶See the discussion in WORTLEY, *EXPROPRIATION IN PUBLIC INTERNATIONAL LAW*, pages 40-57.

¹⁸⁷*N.V. Verenigde Deli-Maatschapijen and N.V. Senembah Maaschapij v Deutsche Indonienische Tabak Handelsgesellschaft M.b.H.*, cited M. Domke, A.J.I.L. 1960, page 315.

¹⁸⁸See the comments of M. Domke on his case in his article, *Foreign Nationalisations*, A.J.I.L. 1961, at pages 585 and 601.

¹⁸⁹The matter is very controversial. See the article by M. Domke, *Indonesian Nationalisation Measures Before Foreign Courts*, 54 A.J.I.L. 305 (1960), and the reply to this article by Baade, *ibid.*, at page 801. British and American courts might refuse to recognise such a title.

¹⁹⁰See the article cited by Baade, who denies that this is the case.

¹⁹¹I.C.J.P., 1953, at page 18.

Ugandan government may, according to a strict construction of the principles of international law applicable, be liable to pay indirect damages as well as the full market value of the property taken.¹⁹² Although many of the post-war nationalisations have had discriminatory features, it seems that not many claims for indirect damages in respect of them have been made in recent years.¹⁹³ It may be that the rule of customary international law requiring indirect damages has undergone some modification, at least in the area of the nationalisation of foreign property, and possibly also in that of expropriation.

*The Possible Relevance of the
Foreign Investments (Protection) Act of 1964 and
of the Ugandan Constitution of 1967*

The Foreign Investment (Protection) Act 1964 is applicable to investments made in Uganda with funds that have originated abroad, which includes the Commonwealth.¹⁹⁴ It seems that this act has not been repealed. Section 2 of the act provides that no enterprise, interest in, or right over, any property or undertaking forming part of the enterprise, shall be compulsorily acquired or taken possession of save in accordance with the provisions of section 22 of the Constitution.¹⁹⁵ Compensation must be paid within six months, and a person who is dissatisfied with a compulsory acquisition or taking of possession, or the amount of compensation payable thereon, may appeal to the High Court for the determination of his right or interest, the legality of the taking, or the amount of compensation due.

It is possible to consider the act in question as one which merely has application in the domestic sphere, although it relates to aliens. It might be thought, however, that the relevant provision could be considered as creative of an estoppel,¹⁹⁶ in favour of investors who take on the faith of its provisions, to the effect that during the period in which the statute is not amended or repealed, or remains in force in Uganda, property will not be expropriated

¹⁹²For the relevant authorities, see BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW*, 2nd ed., page 524, fn. 5.

¹⁹³The British government made such a claim in the *Anglo-Iranian Oil Case*. See the British Memorial, I.C.J.P. 1955, at pages 109-10, and GILLIAN WHITE, *NATIONALISATION AND EXPROPRIATION*, page 211.

¹⁹⁴*Ibid*, section 5(2).

¹⁹⁵Now see section 13 of the 1967 Constitution.

¹⁹⁶For discussions of estoppel in public international law, see the Individual Opinions of Judges Alfaro, Fitzmaurice and Spender in the *Case Concerning the Temple of Preah Vihear*, 1962 I.C.J. Reports at pages 39-51, 62-5 and 143-4, and the Majority Opinion of the International Court of Justice in the *Barcelona Traction Case* (Preliminary Objection) 1964 I.C.J. Reports at page 6. See also Bowett, *Estoppel Before International Tribunals and its Relation to Acquiescence*, B.Y.I.L. 1957 at page 176, J.C. Macgibbons, *Estoppel in International Law*, I.C.L.Q. 1958 at page 509, and the paper on estoppel by Dominice in *Etudes Dans l'honneur de Paul Guggenheim*, pub. Genève, 1968. Estoppel is often thought to be a shield and not a sword in public international law; see the judgement of Sir Percy Spender in the *Temple* case.

except in accordance with its provisions.¹⁹⁷

It is not thought that Uganda could be held to represent, in passing the statute that it would never be amended, repealed or fall into desuetude as a result of internal revolution. Any inference of a restriction on the right of a state to legislate internally requires positive establishment.¹⁹⁸

Decree No. 27 of 1972, as amended by Decree No. 29 of 1972, section 16, does not provide for the payment of prompt and adequate compensation within six months, which compensation has not been paid, nor does this section appear to make it possible to refer the legality of the takings to the High Court.¹⁹⁹ It may be that the decree impliedly repeals or amends the Foreign Investments (Protection) Act to the extent to which they are incompatible,²⁰⁰ and that it is not possible for the relevant investors to claim that the Act of 1964 effects an estoppel. It also appears that since the revolution, the act may have fallen into disuse.

It is doubtful whether article 22 of the Constitution of 1962, or article 13 of the Constitution of 1967 can be regarded as effecting any estoppel on behalf of expellees who bought or retained property in Uganda when the constitutional provisions were in force.²⁰¹ Such constitutional provisions may be thought to have primarily internal effect and not to be creative of international obligations. Given that they are so creative, it would be very difficult to show that a particular alien had acquired or retained property in Uganda on the faith of a constitutional provision of which he might very well have been ignorant.

It would also be difficult to show that aliens who were cognisant of the constitutional provisions, had not bought or retained property not primarily because of them, but because of their own expectations as to the political and economic future of Uganda or because of the difficulty in finding a purchaser.

¹⁹⁷See NWOGUGU, *THE LEGAL PROBLEMS OF FOREIGN INVESTMENTS IN DEVELOPING STATES*, page 63, for the contention that such a statute might create an estoppel.

¹⁹⁸See the *Lotus Case*, D.C.I.J. Series A, No. 10. The writers are indebted to Professor D.H.N. Johnson of the L.S.E., Dr. Michael Akehurst, Senior Lecturer in Law at the University of Keele, Dr. Geoffrey Marston, Fellow of Sidney Sussex College, Cambridge, and Mr. Steven Katz, Lecturer in Law at the University of Wales Institute of Science and Technology for their assistance in elucidating some questions relating to estoppel. The opinions expressed are those of the present writers.

¹⁹⁹The formula of words used is that any person aggrieved by the decision of the values may refer the matter to a tribunal (which has not yet been constituted), and then to the High Court. Appeals are only, it seems, to be allowed against the valuation of the property.

²⁰⁰It seems that section 2(b)(1) of the Judicature Act, 1962, provides that the doctrine of implied repeal is part of the law of Uganda. This section provides, somewhat ambiguously, that the principles of English common law which were in force before August 11th, 1902 are part of the law of Uganda, so far as circumstances permit and with suitable qualifications to local circumstances. The doctrine of implied repeal was known to English law before 1902; see *Garnett v. Bradley*, (1878) 3 App Cases 944. The fact that the doctrine is known in Uganda is also implicit from the Interpretation Act, 1963, section 16.

²⁰¹Article 13 applies, like article 22, to all expropriations of property in Uganda, whether or not the property was bought with funds originating from abroad.

Even if these difficulties could be surmounted, it is thought that Uganda could not be held to represent that she would never alter or amend her constitution, or that it would never fall into desuetude.²⁰²

It does not seem, therefore, that either the provisions of the Act of 1964, or of either Constitution, could be held to effect an estoppel on behalf of the states of the expellees. These states must look to the existing provisions of general international law, regarding the expropriation of the property of aliens, in making claims on behalf of their nationals, and not to the specific provisions of Ugandan law mentioned.

The Duty to Pay Compensation

Both the existence of the duty to pay compensation when foreign property is nationalised or expropriated, and the quantum of compensation to be paid in the event of such nationalisation or expropriation, have been the subject of controversy in recent years. The provisions of national legislation have often recognised the existence of a duty to pay in recent years,²⁰³ as have also many composition agreements entered into between states in post-Second World War years.²⁰⁴

The General Assembly's well-known resolution, *Permanent Sovereignty over National Resources*, which constitutes evidence of international customary law, states that in the case of nationalisation, expropriation or requisition, the owner shall be paid appropriate compensation in accordance with the rules in force in the state taking such measures in the exercise of its sovereignty, and in accordance with international law.²⁰⁵

Investor states have usually argued in favour of adequate compensation when the property of their nationals has been expropriated. It is not clear what is meant by adequate compensation, although a definition has been attempted in the Harvard *Draft on the Responsibility of State for Injuries to Aliens*.²⁰⁶ International lawyers have often questioned the principles of prompt, adequate and effective compensation in the case of nationalisation measures, and it may be that some of the considerations that have motivated this questioning are also operative in the case of the Ugandan expropriations of non-citizen Asian

²⁰²It may be that the 1967 Constitution has already fallen in desuetude. The matter receives further discussion when the question of local remedies is considered.

²⁰³See NWOGUGU, *THE LEGAL PROBLEMS OF FOREIGN INVESTMENT*, pages 59 *et seq.*

²⁰⁴AMERASINGHE, *op. cit.*, *supra*, at page 146.

²⁰⁵The decision of the Bremen Court of Appeals already referred to, denied the duty to compensate in the case of nationalisations of a general character with the purpose of changing the social structure of a colony; see 56 A.J.I.L., 1962, at page 316.

²⁰⁶See A.J.I.L. 1961 at page 553 (article 10). Adequate compensation is there defined as the compensation which would be granted to the nationals of the State taking the property, or the fair market value of the property, or in the absence of such a fair market value, just compensation in terms of the value of the property.

property, although they have many objectionable features.²⁰⁷

It may be that a new rule of customary international law is in process of formation, according to which less than full, but substantial, compensation must be paid in the event of the nationalisation of foreign property. The reasons for such a rule may be the need of many emergent countries to develop, the limitation of their economic resources, and perhaps the profit made by foreign investors, and the indirect harm done to the economy by their activities.

It is clear that Uganda requires to develop her own industrial and commercial activities and has limited resources. It is also true that Asians have made considerable profits in that country, sometimes by means of exploitation, and often have remitted them abroad to the detriment of the economy.²⁰⁸ It may be that these considerations militate in favour of the payment of less than full compensation, even though the expropriations were discriminatory.

It seems that the U.K. would probably in any negotiations with Uganda, initially adopt the position that, especially in view of certain of the circumstances of the expropriations, international law requires the payment of prompt, adequate and effective compensation.²⁰⁹ It is thought that any compromise which might be reached, whether or not it is considered to be based on existing principles of international customary law, would necessarily be on the basis of something less than full and adequate compensation.

The British government has adopted the view that payment should be made in convertible currency.²¹⁰ The attitude adopted by it seems justified; compensation in the form of Ugandan bonds would not be satisfactory, as the income from them could not be transferred abroad freely.²¹¹ Payment should, it is thought, be made over a reasonable period of time, and the Ugandan government could not plead its undoubted economic difficulties in securing an undue delay. The British government has already conceded, in its Memorial in the *Anglo-Iranian Oil* case, that delayed payment of compensation is

²⁰⁷Lauterpacht stated that full compensation was not always necessary, and that the obligation to pay full compensation might make a projected reform impossible: see Hague Recueil, 1937, volume 4 at p. 346. See also the statements relating to in expropriation of the additional requirements of prompt, adequate and effective compensation in cases in which developing countries expropriate property, which were made by Senor Padilla Nervo of Mexico, and Mr. Pal of India to the International Law Commission in 1957: Yearbook of the I.L.C., 1957, Volume 1 at pages 155 and Note also the decision of the Civil Court of Rome in *Anglo-Iranian Co. Ltd. v. U.P.O.R.* (1955) INT. L. R. 22, in which it was stated that, provided some compensation was paid, the expropriation in question (arguably a discriminatory one) was not contrary to international law.

²⁰⁸See General Amin's telegram to President Nixon, reported in Voice of Uganda, April 5th, 1973, at page 1.

²⁰⁹It is unlikely that a claim for indirect damages would be made, even though the takings seem to be contrary to international law. It is still less likely that a claim for specific restitution of certain Asian properties would be made by the U.K. although such claims may be legally justified.

²¹⁰See the statement referred to by Sir Alec Douglas-Home in the House of Commons on December 14th, 1972.

²¹¹See AMERASINGHE, *op. cit.* at page 162 for the suggestion that payment of compensation may sometimes be made in bonds.

admissible under certain conditions, namely, that satisfactory guarantees that future payments will be made, must be given.²¹² The British position may represent the present rule of customary international law.

It is not thought that Uganda could refuse to meet her obligation to pay compensation within a reasonable period of time, and in a convertible currency, by pleading her inability to obtain the necessary foreign exchange. It would appear that, should she show herself willing to meet her international obligations, funds could be made available to her from creditor countries and from international financial agencies.²¹³

It is unlikely that the question of the expropriation of non-citizen property will be referred to the International Court of Justice. It would, it is thought, be possible for the parties to waive compliance with the local remedies rule, and refer a dispute concerning the payment of compensation to the International Court of Justice by special agreement if they were willing.²¹⁴ It is doubtful whether adequate local remedies exist in Uganda and there are, of course, political difficulties in the way of courts inhibiting them from granting such remedies as may exist.

Until valuers are appointed by the Ugandan government, the tribunal provided for by section 16(3) of Decree No. 29 of 1962 cannot enter upon its functions, and neither can the High Court. An action of mandamus might theoretically be brought on behalf of the expellees against the members of the Abandoned Property Custodian Board, to compel the appointment of valuers, but such an action is unlikely in the extreme to receive a hearing under present political circumstances.

It seems, as has been suggested to be implicit from the wording of this section, that expellees may not challenge the validity of the expropriating decrees before the board, but merely the quantum of compensation. It would, however, perhaps be theoretically possible to argue before the tribunal that, as the expropriations were not in accordance with international law, the Ugandan government must pay indirect damages in respect of them.

The remedy provided for those who have bought certain categories of property with funds originating from abroad, by section 2(3) of the 1964 Foreign Investments (Protection) Act, may well be in desuetude or the act may be treated as amended by Decree No. 29, article 16 of 1972. It might be possible, given a different political climate in Uganda, for representatives of expellees to ask the

²¹²See I.C.J.P. 1951 at page 106, and for treaty practice in the area of nationalisation, FOIGHEL, NATIONALISATION, 1957 pages 127 *et seq.*

²¹³Note the *Russian Indemnity Case*, Scott 1 H.C.R. page 532 at page 546. See also Cheng, the *Rationale of Compensation for Expropriation*, Transactions of the Grotius Society, 1958-9, page 267, at page 308. Note especially the cases mentioned at footnote 131.

²¹⁴The local remedies' rule is generally thought to be of a procedural character. See AMERASINGHE *op. cit.*, *supra*, Chapter VI, and the authorities referred to.

High Court to grant an appropriate remedy for the non-observance of article 13 of the 1961 Constitution, which article relates to the expropriation of property.²¹⁵ In the present political climate, the chances of the High Court hearing a case brought on behalf of an expellee, and based on the non-observance of section appear minimal.²¹⁶

Failure to grant legal representation to such expellees may amount to a denial of justice.²¹⁷ Thus, Uganda has successfully carried into effect a programme of racially discriminatory expropriations without compensation being paid in respect of them, although some compensation has been promised in the future. The likelihood of the obtention of municipal or international remedies in respect of the expropriations in the immediate future appears extremely small.

Conclusion

The Ugandan expulsions have served to demonstrate some of the weaknesses of contemporary international law, and the uncertainty which exists as to the precise content of its norms in the areas of human rights and the expropriation of foreign property. Although the U.K. accepted her undoubted international obligation to her expelled nationals and citizens, there may be political difficulties in the way of her doing so again in the event of future mass expulsions.

It is to be hoped that the U.K. will not take refuge in a doubtful application of the "link" theory if faced with a similar problem in the future. It is thought doubtful whether she would do so. It would also be difficult for the U.K., a signatory of the New York Convention on Reduction of Statelessness, to deprive her citizens of their nationality, in order to prevent their entry if expelled.

Although the precise content of the present norms of international law relating to the collective expulsion of aliens is not simple to determine, it is

²¹⁵In the case of the non-observance of the human rights provisions of the Constitution of 1967, it is possible to apply to the High Court for an appropriate remedy in accordance with section 20(1) of the Constitution. It is thus theoretically possible for representatives of expellees to claim a declaration that the expropriating decrees be read subject to article 13 of the Constitution, such that individuals may be able to claim prompt and adequate compensation, or to contest the validity of the expropriations in the courts.

It may be doubted whether the Constitutional provision in question is still in force. General Amin has purported to suspend certain provisions of the Constitution of 1967, and he has assumed wide powers as a result of the Constitution (Amendment) Order, Decree No. 5 of 1971. Political activities have been banned by Decree No. 14 of 1971, which is expressly stated to take effect notwithstanding the civil rights provisions of articles 10 and 17-19 of the 1967 Constitution. It seems probable that, if Ugandan judges were confronted with the issue, they would decide either that article 13 is in suspense, or that, owing to the lack of effectiveness of the 1967 Constitution, none of its provisions retain any validity. The present position can be distinguished from that which obtained in *Uganda v. Prison Commissioner ex parte Matovu* (1966) E.A. 514, as in that case, a new Constitution had been promulgated.

²¹⁶No cases of constitutional importance have been dealt with by the Ugandan Courts within the last two years.

²¹⁷See *X v. Government of Sweden*, (1959), European Yearbook of Human Rights at page 354.

thought that, at least in the case of apparently racially discriminatory expulsions, the onus is on the expelling state to show the presence of compelling non-racial grounds for the expulsion. There have been many collective expulsions since 1945, and the level of activity of the international community and of the political organs of the United Nations, has perhaps been disappointing.²¹⁸

The Human Rights Commission of the Economic and Social Council of the United Nations will turn its attention to the protection of non-citizens in the near future,²¹⁹ and hence to the questions of the individual and collective expulsions of aliens. It would be desirable if the law in respect to this latter matter could be clarified. It is noteworthy that recently President Kenyatta has stated that the rights of the minority in East African states should be reconciled with the legitimate interests of the African majority, and that independence is meaningless without guarantees of human rights and fundamental freedoms.²²⁰

A multilateral treaty concerned with the protection of aliens might be formulated, according to the provisions of which discriminatory collective expulsions were made clearly illegal, whether the discrimination was on the grounds of race, language, religion, nationality or national origins. Other collective expulsions should be permitted only where there are serious grounds other than those just mentioned. Some would argue that collective expulsions should not be permitted at all in peacetime.²²¹

No expulsion should be permitted without a serious inquiry taking place.²²² Special considerations should be given to the protection of aliens who have long been residents in a given country. It should be made clear that the collective expulsion of aliens is not permissible except as a reprisal. The determination of the existence of serious grounds of expulsion should be within the jurisdiction of an international tribunal. This tribunal should perhaps be given jurisdiction in both the case of individual and collective expulsions. Any state party to the proposed treaty should be able to ask the tribunal to interpret and apply it and to refer its alleged breach by any party to the tribunal.

It may be, however, that any multilateral treaty on a universal basis which

²¹⁸Thus, in December 1969, several thousand Nigerians were expelled by the Busia regime in Ghana. More recently, Ghanaian immigrants have been expelled from Sierra Leone and Liberia and Iraqis from Iraq. None of these expulsions have resulted in any decisive United Nations action.

²¹⁹The Commission on Human Rights has recently adopted a British resolution requiring the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to consider the legal protection of non-citizens: see U.N. Document E/CN4/L. 1240 Rev./1.

²²⁰The Times, 2nd June, 1973 page 6, col. 5.

²²¹Customary International law is used to permit collective expulsions in wartime. Thus, in 1870, there was a collective expulsion of Germans from France and, in 1898 and 1911, an expulsion of Greeks and Italians from the Ottoman Empire. For the examples cited, see LUBENHOFF, *DIE VÖLKERRECHTLICHE LAGE AUF DEM BALKAN*. ZfaoVR, 1934, at page 127. The modern practice appears to be to intern enemy aliens in wartime, and cogent reasons would be required for departure from this practice.

²²²Aliens should always have a right of appeal to judicial or administrative bodies.

attempted to define and restrict the power of states to expel aliens would obtain few signatures, and would encounter many reservations. The experience with the United Nations covenants on human rights has not been encouraging. Perhaps conventions on a regional basis are more likely to obtain success than those on a universal basis in this area. Some advanced states may consider the question of the expulsion of aliens to be within their domestic jurisdiction whilst many emergent states have minorities which they may consider to be troublesome, difficult to integrate, possessed of too much economic power or of foreign loyalties. Certain of these states may sometimes contemplate the expulsion of such minorities and they may thus be unwilling to fetter what they may consider their existing freedom by entering into conventional obligations.

The analysis attempted of the Ugandan expropriations may serve to demonstrate the conflict of interests and doctrine which exists on many questions relating to the expropriation and nationalisation of foreign property in contemporary international law. As has been suggested, it is extremely unlikely that Uganda will pay full or prompt compensation, whatever may be the applicable rules of international customary law in the circumstances, and however unsatisfactorily she may have behaved. The Ugandan expropriations demonstrate the limited value of investment-guarantee laws, and of constitutional provisions which provide for prompt and adequate compensation.

It may be that the international community can bring some pressure on Uganda to pay compensation if states refrain from granting loans to her, and international financial institutions likewise refrain, until the question is satisfactorily settled. Expulsion from the Commonwealth would be more likely to exacerbate extreme nationalistic or racial feelings than to achieve any positive result.²²³

²²³Note the questions to Lady Tweedsmuir, Minister of State at the Foreign and Commonwealth Office by Lords Barnby, Avebury Gladwyn and Slater on March 20th, 1973, concerning the possibility of expelling Uganda from the Commonwealth, and from the United Nations: Parliamentary Debates, H.L., Weekly Hansard, Issue No. 862, 19th-22nd March, cols. 591-4. Uganda could be expelled from the United Nations according to article 6 of the Charter, as she has not fulfilled her obligations in good faith, but it is doubtful whether this would do any positive good.